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CONGRESS AND PRESSURE GROUPS: LOBBYING IN A MODERN DEMOCRACY

A REPORT

PREPARED FOR THE

SUBCOMMITTEE ON
INTERGOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

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LETTER OF TRANSMITTAL

U.S. SENATE,
SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC, May 1986.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Governmental Affairs, Washington, DC.

DEAR MR. CHAIRMAN: I am herewith transmitting for printing as a committee print a study entitled "Congress and Pressure Groups: Lobbying in a Modern Democracy." This study was done by the Congressional Research Service at my request as Chairman of the Subcommittee on Intergovernmental Relations. I would like to acknowledge, in particular, the assistance of Richard Sachs of the Congressional Research Service, who served on detail to the subcommittee during the course of oversight hearings on the 1946 Federal Regulation of Lobbying Act. Mr. Sachs is the principal author of this study with contributions by Joseph Cantor and Thomas Neale of CRS.

Given the continuing interest in lobbying reform and campaign finance, I believe this study will be useful as a committee print for both Members of Congress and the Executive Branch.

Sincerely,

DAVE DURENBERGER,
Chairman, Subcommittee on International Relations.

Enclosure.

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PREFACE

The part that interest groups and lobbyists play in shaping U.S. public policy has been a subject for discussion and debate for over two hundred years. It is an immense topic in terms of its historical range: James Madison considered as a matter of the first importance the question of balancing the selfish wishes of the "factions" with what would be best for the new nation. Though more often than not associated with its more shadowy aspects, lobbying is a recurring leitmotif in the drama of American politics; lobbyists are prominent in the economic expansion of the new republic, in the social movements of the late nineteenth and mid-twentieth centuries, and in the current era of economic redistribution. The subject bears directly upon constitutional freedoms of petition, speech and assembly, and the limits of these freedoms and the manner in which they may be regulated. Political analysts and philosophers have evolved complex theories of government and democracy itself, based on relationships between interest groups and government.

Although pressure group activity in the Federal agencies has increased in recent years, Congress remains the primary target. In its relationships with pressure groups, Congress reflects the complex relationships of individuals and groups in society. Often, Congress is both a willing suitor and an unhappy victim of pressure groups. Depending upon time, place and circumstance, it welcomes the assistance that groups provide or it assails them for selfishness and obstructionism. In its criticisms of pressure groups, it sometimes fails to distinguish between the process of group pressure and what a group stands for.

To a degree, Congress controls the lobbyists. It prohibits some groups from lobbying entirely (certain tax-exempt, non-profit groups), allows a certain amount of lobbying by other groups (certain tax-exempt, non-profit groups), and permits virtually unfettered lobbying by a third large class of organizations. To differing degrees, it controls the amount and type of lobbying that can be done under a Federal contract by defense contractors, civilian contractors and non-profit grantees. Congress statutorily prohibits the use of appropriated funds for lobbying, but has difficulty drawing the line at where information exchange ends and lobbying begins; for example, it has traditionally provided office space for Pentagon liaison offices, whose job in large part is to promote the Department of Defense's legislative agenda. Congressional investigations of alleged lobbyist improprieties or illegalities often place Members, themselves, at the center of attention, since they are the lobbyists' target. Even in their ordinary, day-to-day relationships with lobbyists, Members of Congress must make ethical and moral judgments about the nature of special interest influence.

Efforts by Congress to make lobbyists disclose some of their activities have met with more failure than success. In this regard, Congress must contend with two compelling and conflicting points of view: first, that the Congress and the public are well-served by the disclosure of private pressures on public issues, and second, that almost all lobbying is constitutionally protected.

These efforts to require disclosure focus even more sharply the complexities and conflicts of Congress-pressure group relationships. The single omnibus disclosure statute—the 1946 Federal Regulation of Lobbying Act (2 U.S.C. 261-270)—was substantially narrowed by a 1954 Supreme Court decision.[1] As a result of the Court's decision, present implementation of the act poorly reflects the extent of lobbying in Washington; that is, many who would generally seem to be lobbyists are no longer required to register under the law. To some, this is as it should be; the Court has protected the primacy of the individual's right to petition. Over the years, however, other Members of Congress have sought to provide a more accurate picture of lobbying pressures. Often, these efforts for change have been precipitated by political scandal involving accusations of lobbyist improprieties. At those times, congressional investigations have resulted in recommendations to expand the law's coverage. Public sentiment in the aftermath of scandal has often favored a broader law. In recent years, following the Watergate and Koreagate scandals, the House approved a new disclosure bill twice and the Senate once, but no law was enacted. After years of debate and political controversy, Congress has yet to find a balance between the desirability of disclosure and the protection of First Amendment rights.

The complexity of Congress-pressure group relationships, particularly as reflected by governmental efforts to control lobbying, is one theme of this report. Another is that Congress could continue its efforts to strengthen the Lobbying Act.

Chapter one reviews the history of lobbying in America, early efforts by Congress to control lobbyists, and the debate over whether interest groups are a positive or a harmful force in the American governmental system; it also sketches some of the techniques that comprise the job of the lobbyist.

Chapter two decribes the growth of lobbying in recent years, the professional representation of increasingly diverse social and economic interests, and the scope of regulations by which Congress has sought lobbyist accountability.

Chapter three analyzes the 1946 Lobby Act, its origins in congressional investigations of lobbying in the 1930s, its swift passage as part of the 1946 Legislative Reorganization Act, its diminishment by the Supreme Court, and subsequent efforts to revitalize it.

Chapter four analyzes the major rationales for disclosure, including the Supreme Court's determination in its 1954 decision and current theories of pro-disclosure advocates. The chapter seeks to determine if there is a middle ground between First Amendment rights and the need to be informed about private pressures on public policies where Congress could agree upon an effective form of disclosure.

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[1] *U.S.* v. *Harriss*, 347 U.S. 612 (1954).

Chapter five attempts a look into the future of lobbying and Congress-pressure group relationships. It draws upon several views of the future of interest groups in society and questions whether lobby disclosure would have a role in the pressure group politics of the future.

Chapter six concludes the report by offering a range of options for congressional action. These options extend from repealing the 1946 Act entirely, through broadening the 1946 Act by mandating criminally enforced disclosure requirements, to a system of voluntary disclosure.

The primary source for this report is the hearings held by the Senate Committee on Governmental Affairs on oversight of the 1946 Federal Regulation of Lobbying Act, on November 15 and 16, 1983.[2] The hearings were significant for several reasons. First, unlike past hearings on this issue, these were not precipitated by accusations of lobbyist impropriety, but by the committee's belief that the issue of lobbyist disclosure could best be considered in an atmosphere of restraint and deliberation. Second, unlike most past inquiries, witnesses included not only affected parties, but experts from the academic community and noted practitioners of the lobbying profession. Not since the broad investigations of a 1950 House Select Committee on Lobbying—informally called the Buchanan Committee after Chairman Frank Buchanan of Pennsylvania—has the issue received such a comprehensive review.[3] Third, the hearings did not focus on one bill or proposal, but sought to accumulate a body of information from which future proposals could be developed.

In addition to congressional and other public documents, the report relies on works from the disciplines of political science, sociology and political history. In discussing the history of lobby disclosure, this paper relies particularly on a study prepared for the 1977 Commission on the Operation of the Senate.[4]

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[2] U.S. Congress. Senate. Committee on Governmental Affairs. Oversight of the 1946 Federal Regulation of Lobbying Act Hearings, 98th Congress, 1st session, 1983. Washington, U.S. Govt. Print. Off., 1984. 540 p. (Hereafter, cited as 1983 Lobby Hearings.)

[3] U.S. Congress. House. Select Committee on Lobbying Activities. The Role of Lobbying in Representative Self-Government. Hearings, 81st Congress, 2d session, 1950. Washington, U.S. Govt. Print. Off., 1950. 1411 p. (Hereafter cited as 1950 Buchanan Hearings.)

[4] U.S. Congress. Senate. Commission on the Operation of the Senate. Senators: Offices, Ethics, and Pressures. Committee Print, 94th Congress, 2d session, 1977. Washington, U.S. Govt. Print. Off., 1977. p. 156-192. (Hereafter, cited as 1977 Commission Study.)

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CHAPTER ONE

INTRODUCTION—THE ROLE OF LOBBYING IN A MODERN DEMOCRACY

This chapter sets the stage for an analysis of lobby law disclosure by looking into three areas: the history of lobbying, especially those people and events that have contributed to the popular view of lobbying as a negative force in our political system; a critical analysis of that popular belief; and an overview of what lobbyists do. In this report, that overview is represented by a discussion of four lobbying techniques that account for the preponderance of the lobbyist's job.

I. ORIGINS OF THE PEJORATIVE VIEW OF LOBBYING

Arguably, lobbying, more than any other aspect of American political history, is possessed of a particular "demonology," a roster of greedy and venal men and a litany of escapades that reflect the dark side of democracy. This section recalls some of those men and events; describes Congress' early efforts to stem perceived abuses; and follows the transition of lobbying from the nineteenth century "old lobby" of "representatives of corporations, patronage-brokers [and] 'wire-pullers' " to the twentieth century "new lobby" of hundreds of associations, societies, institutes, federations, consultants and lawyers at work to influence decisions in a diverse and complex political milieu.[1]

A. Madison's Theory of Faction

Popular opinion has held negative views of lobbying and lobbyists since the earliest days of the American Republic. James Madison, father of the United States Constitution, was particularly concerned with the allegedly pernicious influence of what was termed "faction" in the language of the day. In Federalist Number 10, Madison succinctly and unsympathetically defined faction as:

> . . . a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.[2]

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[1] Herring, E. Pendleton. Group Representation Before Congress. Baltimore, The Johns Hopkins Press, 1929. p. 41.

[2] Hamilton, Alexander, James Madison, and John Jay. The Federalist. Cambridge, Mass., Havard University Press, 1966. p. 130.

Yet, despite his obvious disapproval, he recognized that the existence and activities of factions were an unavoidable part of democratic government, and that the mischiefs of the former could only be cured by constraining the latter. This Madison refused to countenance. Instead, he concluded "that the causes of faction cannot be removed, and that relief is only to be sought in the means of controlling its effect." [3]

Madison's fears, and those of the other founders, were realized as the new Constitution was implemented: factional groups within Congress began to coalesce almost immediately, leading swiftly, perhaps inevitably, to development of the Federalist and Anti-Federalist (Democratic-Republican) parties. So, too, individuals and groups began to appear at the convening of the First and all subsequent Congresses to press their causes and interests before the legislature.

Ironically, Madison, Hamilton, Washington, and their federalist colleagues had themselves orchestrated one of the most successful lobbying campaigns in American history. They promoted the idea of a revised national charter, guided the deliberations of the Philadelphia Convention of 1787, and secured state ratification of the Constitution in a well-planned, brilliantly executed campaign.

B. ECONOMIC GROWTH AND THE ROLE OF THE LOBBYIST

Lobbying in the early days of the republic was essentially an activity carried on by individuals or ad hoc coalitions established for specific purposes and carried forward for only a limited period.

Nicholas Biddle's determined, though unsuccessful, campaign for charter renewal for his Bank of the United States, in the face of unswerving opposition by President Andrew Jackson, has been characterized as a landmark in the development of "professional" lobbying.[4] As his chief lobbyist, Biddle relied on the services of one of the most distinguished public figures of the day: Senator Daniel Webster was on retainer to the Bank throughout the struggle, even while leading the fight on the Senate floor to overturn Jackson's veto of the charter. This indisputable conflict of interest has been regularly cited in support of pejorative view of lobbying, along with Webster's famous private communication with Biddle:

> . . . I believe my retainer has not been renewed or refreshed as usual. If it be wished that my relation to the Bank should be continued, it may be well to send me the usual retainers.[5]

By the middle of the nineteenth century, the United States had begun to make the transition from an agrarian republic to a modern industrial nation. The Civil War sped and intensified this transformation, while establishing the Federal Government and the city of Washington as focal points for the efforts of various commercial interests and their increasingly numerous representatives.

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[3] Ibid.

[4] Luce, Robert. Legislative Assemblies: Their Framework, Characteristics, Habits, and Manners Boston, Houghton-Mifflin, 1924. p. 367.

[5] Malone, Dumas, and Basil Ranch. The Republic Comes of Age. New York, Appleton-Century-Crofts, 1960. p. 215.

1. LOBBYING AND THE DEVELOPMENT OF AMERICAN RAILROADS

In 1862 President Abraham Lincoln signed the Pacific Railway Act, in which the United States Government undertook to assist in the construction of a transcontinental railroad. Support consisted of direct construction loans to the Union Pacific and Central Pacific Railroads, and a program of generous land grants to other operators. The agents of various groups of financiers and promoters competed furiously in Washington for congressional approval of their particular projects, with the eventual result that three additional lines, the Sante Fe, Southern Pacific and Northern Pacific were given charters and large land grants in the fifteen years following the Civil War.

Rail lobbyists also secured passage of additional legislation designed to maximize the value of lands granted by the United States: under the Desert Land Act (1877) and the Timber and Stone Act (1878), grantee lines were able to exchange barren lands included in their right-of-way strips for more saleable parcels elsewhere. In all cases, the proceeds from resale or resource development accrued to the railroads as profit.[6]

The Credit Mobilier scandal of 1872 epitomized both the power of the rail lobby in Washington, and the potential for abuse of both public funds and public trust that grew out of the hectic rush to span the continent.

In 1864, during construction of the Union Pacific, a "dummy" corporation, Credit Mobilier of America, was acquired by the line and used for stripping Federal land grant bonds, stocks, and other sources of income from the railroad itself; stockholders in Credit Mobilier than pocketed the substantial proceeds as dividends and enjoyed additional gain as company stock increased in value. In 1867, when it appeared likely that Congress would investigate corporate activities, Credit Mobilier President Oakes Ames, who was also serving in the House of Representatives as Congressman from Massachusetts throughout this period, began regular distribution of stock in the places he felt it would do most good. Shares were offered to legislators and cabinet members at par, far below market value, and payment could be made through transfer of accrued dividends. Ames's generosity appears to have delayed the eventual discovery of Credit Mobilier's abuses, but in 1872, the story was broken by the *New York Sun* and investigations followed in both houses of Congress. Ames and another Representative, James Brooks of New York, were censured by the House, while expulsion of Senator James Patterson of New Hampshire was recommended but not carried forward, as his term was expiring. Numerous other influential figures, including James G. Blaine, Schuyler Colfax, James A. Garfield, and George S. Boutwell were found to have been the recipients of Credit Mobilier stock.

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[6] Morison, Samuel Elliot, Henry Steele Commager, and William E. Leuchtenberg. The Growth of the American Republic. v. 2. New York, Oxford University Press, 1969. p. 38-40.

2. LOBBYING IN THE GILDED AGE

The extraordinary burst of industrial expansion following the Civil War marked the beginning of America's "Gilded Age," a period of boom and bust, exuberant confidence, almost unfettered capital power, and great social change.

Lobbying prior to the Civil War had been largely the preserve of individual agents—"hired guns"--who had few permanent attachments and could be retained to promote almost any bill they felt appropriate. These veterans began to be replaced by the permanent representatives of various interests in the last third of the century. In addition to the rail lobby, industrialists' agents successfully lobbied for maintenance of high tariffs on imported manufactures—a basic element of Republican party platforms—and veterans' organizations sought to expand Civil War pension coverage, while on the other hand, the Women's Christian Temperance Union and allied groups continued their persistent, and ultimately successful, campaign for prohibition.

Some of the lobbying techniques of the Gilded Age would be familiar to any Washington representative in the 1980s: positions were analyzed, favorable arguments arrayed, speeches prepared, personal contacts with members of key committees pursued, and appearances were made at commitee proceedings. Even a grassroots campaign was effectively employed in the interest of securing favorable legislative outcomes.

Certain other practices of late nineteenth century lobbyists reflect the unique exuberance of the period. The relationship of the New York State Legislature and several national insurance companies operating under State charter is noteworthy. Andrew C. Fields, chief legislative agent in Albany for two major insurers, maintained the famous "House of Mirth." Ostensibly a supply department, it was, in actuality, both headquarters for heavy-handed corporate lobbying and a private club where Fields provided lavish entertainment for members of the legislature. When the State eventually investigated, it was determined that Field had spent almost $3 million operating the House of Mirth, allegedly for printing, stationery and postage.[7]

Washington counterparts to the House of Mirth were to be found in the elegant parlors of certain society matrons, where Members of Congress were lavishly entertained while subjected to the subtle pressures of the lobbyist. Ben Perley Poore noted:

> . . . the most adroit lobbyists belong to the gentler sex. . . . They are retained with instructions to exert their influence with designated Congressmen. . . . To enable them to do their work well, they have pleasant parlors, with works of art and bric-a-brac donated by admirers. Every evening they receive, and in the winter, their blazing wood fires are often surrounded by a distinguished circle. . . . Who can blame a Congressman for leaving the bad cooking of his hotel or boardinghouse, with the absence of all home

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[7] Schriftgiesser, Karl. The Lobbylists, Boston, Little, Brown, 1951.

> comforts, to walk into the parlor web the cunning spider lobbyist weaves for him.[8]

Although the hostesses in these cases were often on retainer for particular individuals, associations, or corporations, a surprising number were lobby agents in their own right, as was noted by James Bryce in *The American Commonwealth.*[9]

In recent years, new insights into lobbying in the Gilded Age have been offered. While the existence of corruption is neither denied nor defended, some scholars have suggested that increased lobbying activity, and its increased visibility, were outgrowths of an era in transition. In the years following the Civil War, both Congress and the Executive Branch struggled to cope with an ever greater workload caused by increasing responsibilities undertaken by the Federal Government. The institutional mechanisms of both branches were, however, still better suited to the less complicated days of the ante-bellum period. It is suggested that the Washington lobby's:

> . . . expert advocacy helped to focus policymaker's attention on demands that might otherwise have gone unnoticed permanently, amidst so many others. Legislators, meanwhile, found themselves listening to such agents because they were desperately in need of assistance as they tried to work through the spider web of clogged agendas, cumbersome committees, obsolete procedures, and amateurism that was early Gilded Age congressional government.[10]

It was during this period, in 1876, that the House adopted a resolution requiring all lobbyists to register with the Clerk of the House. This marked the first congressional effort to regulate lobbying. This requirement was apparently in effect only for the 44th Congress.[11]

But although Congress took little action to regulate lobbying, State legislatures were considerably active. In 1873, Alabama amended its constitution to declare that, "The offense of corrupt solicitation of members of the General Assembly, or of public officers of this State, or of any municipal subdivision thereof, and any occupation or practice of solicitation of such member or officers to influence their official action shall be denied by law, and shall be punished by fine and imprisonment."[12] Shortly thereafter, Georgia and California also declared lobbying to be a felony.[13] In 1890, Massachusetts enacted a disclosure statute and in 1905, the Wisconsin legislature approved a statute making it a felony offense for a paid lobbyist to "approach a legislator privately or personally upon any matter which is the subject of legislation."[14]

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[8] Poore, Benjamin Perley. Perley's Reminiscences of Sixty Years in the National Metropolis. v. 2. New York, W.A. Houghton, 1896. p. 513-515.

[9] Bryce, James. The American Commonwealth. v. 1. London, MacMillan, 1891. p. 647-652.

[10] Thompson, Margaret Susan. Corruption—or confusion? lobbying and congressional government in the early gilded age. Congress and the Presidency, v. 10, Autumn 1983: 185.

[11] 1977 Commission Study, p. 163.

[12] In U.S. Library of Congress. Congressional Research Service. History of House Consideration of Lobby Legislation, 1852-1927. Typed Report by Daniel P. Mulhollan, January 22, 1985. p. 15.

[13] Ibid., p. 16.

[14] Ibid., p. 17-19.

The actions of the States presaged the national effort to control lobbying and were part of the new consciousness emerging among American elites as the hard edges of Gilded Age society came under critical scrutiny, and later, under attack. The freewheeling habits of industrialists and financiers, including their ruthless exploitation of resources, both natural and human; their unashamed embrace of Social Darwinism; their manipulation of trade, transportation and financial markets; and, not least, their persistent and often successful efforts to secure favorable legislation on the State and national levels were first revealed, then questioned, and finally condemned.

3. WOODROW WILSON'S ATTACK ON "THE LOBBY"

Woodrow Wilson capped a career as a distinguished scholar of American government and, later, as successful reform governor of New Jersey when he was inaugurated President in 1913. But as early as 1885, Wilson had warned against "the power of corrupt lobbyists to turn legislation to their own purposes. [The citizen] hears of enormous subsidies begged and obtained; of pensions procured on commission by professional pension solicitors; of appropriations made in the interest of dishonest contractors; and he is not altogether unwarranted in the conclusion that these are evils inherent in the very nature of Congress."[15]

Wilson, along with other commentators, had identified the autonomous structure of congressional committees at the time as a major reason for the success of lobbying efforts:

> . . . the power of the lobbyist consists in great part, if not altogether, in the facility afforded him by the Committee system. He must, in the natural course of things, have many most favorable opportunities for approaching the great money-dispensing Committees. It would be impracticable to work up his schemes in the broad field of the whole House, but in the membership of a Committee he finds manageable numbers. If he can gain the ear of the Committee, or of any influential portion of it, he has practically gained the ear of the House itself.[16]

Wilson's attack on the committee system was written well before the House's 1911 rules revision that broke the power of the Speakership and opened up most committee activities to the public. This change was seen by many observers of the period as significantly eliminating some of the abuses of lobbying, as well as legitimizing the process. In many respects, it marked the transition of lobbying into the form it takes today. One analyst of the period expressed this distinction when he wrote:

> The new rules served to break up the small clique in power and gave the representatives generally more control over the procedure. This was a blow to the old lobby. It was patently impossible to cajole or bribe an entire

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[15] Wilson, Woodrow. Congressional Government. Cleveland, Ohio, World Publishing Company, 1956 [1885] p. 132.

[16] Ibid., p. 133.

> Congress . . . By . . . openly testifying before committees the lobbyists of legitimate interests can make their appeal to a much wider audience. Not only to Congress but the whole country as well may know their arguments for a bill. The frankness of the legitimate interests makes it necessary for the questionable lobbyist to assume a like disguise. It is not possible to work behind "closed doors" to the same extent. The general public is thus enabled to understand more clearly the forces that are interested in legislation.[17]

As President, Wilson first clashed with an enhanced lobby early in his term. As part of the administration's reform program, Rep. Oscar W. Underwood, House Majority Leader, had introduced a bill substantially reducing tariff rates on imported manufacturers, a historic reversal of the protectionist policies in effect since the Civil War. The "tariff lobby," representatives of numerous manufacturing interests across the country, responded with an intensive campaign on all levels, from grass-roots activities to personal lobbying of Members of both houses of Congress in the Capital. Surprised at the intensity of his opposition, President Wilson replied with a sharply worded attack on the lobby:

> Washington has seldom seen so numerous, or so insidious a body. The newspapers are being filled with advertisements calculated to mislead the judgement not only of public men, but also the public opinion of the country itself. There is every evidence that money without limit is being spent to sustain this lobby and to create an appearance of a pressure of public opinion antagonistic to some of the chief items of the tariff . . . . It is thoroughly worth the while of the people of this country to take knowledge of the matter. Only public opinion can check and destroy it.[18]

President Wilson's charges were soon given additional credence when the *New York World* published an article by Martin Mulhall, former chief Washington agent for the National Association of Manufacturers, detailing his highly questionable lobbying activities, which had included alleged bribery of sitting Members of Congress.

In response, the Senate began the first full-scale investigation of lobbying ever undertaken by either house. The Judiciary Committee conducted extensive hearings which disclosed a pattern of abuses by Washington lobbyists. At the same time, the House appointed a select committee to investigate the N.A.M.'s lobbying activities. After four months' investigation, the select committee recommended passage of a bill requiring registration of all lobbyists with the Clerk of the House. The bill passed the House of Representatives but failed in the Senate.

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[17] Herring, Group Representation Before Congress, p. 41-42.

[18] U.S. Congress. Senate. Committee on the Judiciary. Maintenance of a lobby to Influence Legislation. Hearings pursuant to S. Res. 92. 63d Congress, 2d session, v. 4. Washington, U.S. Govt. Printing Off., 1913. p. 3.

The years of the Wilson Administration also witnessed an accelerating trend toward institutionalization of interest group representation. When the United States entered the First World War in 1917, the Federal Government faced an unprecedented challenge of organizing the private sector for participation in the war effort. Federal coordination agencies, such as the War Industries Board, the Food Administration, and others, officially requested the establishment of trade associations in many industries which had not previously been served by such groups. Organized to promote cooperative planning and standardization of products during wartime, the new associations, established in all segments of American society, continued in existence after 1918, acquiring the peacetime mandate of promoting the interests of their members.

C. Early Congressional Efforts to Regulate Lobbying

The first serious attempts to require registration of lobbyists in Washington were undertaken during the Grant administration, at the height of the Gilded Age. In 1875, Senator George S. Boutwell of Massachusetts, who had earlier been implicated in the Credit Mobilier scandal, introduced a bill in the Senate providing for establishment of a "Congressional Bar," based on the British model, in which respected and qualified attorneys would have been bonded and registered with the House and Senate, and who would be permitted to represent petitioners' interests before Congress and its committees.

Although Boutwell's novel bill received little attention, the House passed a resolution in 1876 providing for the first registration requirements to be approved by either house of Congress. At that time, Rep. George F. Hoar introduced, and the House passed, a resolution requiring all persons or corporations representing interests before the House to file the name and authority of their agents with the Clerk of the House, under penalty of exclusion from committee proceedings. Hoar's resolution passed by voice vote and continued in effect for the balance of the 44th Congress. Although the resolution had only a limited life span, and failed to provide an enforcement mechanism, it was a significant first step in the regulation of lobbying.

In 1913, although Senate and House investigations failed to bring about concrete action to register lobbyists or otherwise control lobbying, other contemporary actions had the effect of abolishing some of the conditions under which unregulated lobbying had flourished. In 1911, reform of House procedures transferred authority for committee assignments from the Speaker to the party leadership, while about the same time, many committee hearings and meetings were opened to the public. Moreover, reform groups gained a victory in their long struggle to democratize the Senate in 1913, when the 17th Amendment to the Constitution was ratified. Popular election of U.S. Senators reduced the chance that interest groups or large corporations could "purchase" a Senator through manipulation of a State legislature.

In 1919, Congress moved to prohibit lobbying with appropriated funds. The action was prompted by concern that agency officials were orchestrating grass-roots lobby campaigns that resulted in the delivery of floods of telegrams and letters to congressional offices.[19]

Growing congressional and public concern over lobbying activities of public utility holding companies in the post war period led to Senate action in 1928 authorizing the Federal Trade Commission to investigate and report on the legislative activities of these groups. The same year, the Senate also passed S. 1095, which would have required lobbyists to register with the Secretary of the Senate and the Clerk of the House. The legislation also included provisions for monthly filings of financial statements by all lobbyists. Although S. 1095 passed the Senate without a record vote, the House failed to act, and the bill died at the close of the 70th Congress.[20]

Senator Thaddeus Caraway of Arkansas, who had introduced S. 1095, also offered a resolution in 1928 calling for establishment of a special committee which would conduct a general investigation of lobbying before the Federal Government. The Caraway resolution was re-introduced in the 71st Congress and gained some headway when, in September 1929, newspapers reported that an assistant to the president of the Connecticut Manufacturers' Association had provided technical advice to Connecticut Senator Hiram Bingham during consideration of the Smoot-Hawley Tariff Act, which substantially raised duties on imported manufactured products. Following this news, the Senate authorized a subcommittee of the Judiciary Committee to conduct a sweeping investigation of lobbyists and lobbying techniques. The investigation continued for two years, and while it yielded 5,000 pages of testimony from 92 witnesses, neither a final report nor recommendations for legislation were forthcoming.[21]

In 1934, Congress enacted the first permanent restrictions placed on lobbyists or lobbying law when the Internal Revenue Code was amended to restrict expenditures by charitable organizations for lobbying. The amendment covered organizations included in Section 501(C)(3) of the Internal Revenue Code, which provided tax-exempt status for groups "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes or for the prevention of cruelty to animals or children." As a condition of tax-exempt status, it required that "no substantial part" of these organizations' activities should consist of "carrying on propaganda, or otherwise attempting to influence legislation."[22]

In 1935, longstanding public concern about lobbying activities by representatives of public utility holding companies resulted in passage of the Public Utility Holding Companies Act, which in one of its provisions required anyone employed or retained by a registered holding company or subsidiary to file report with the Securities and Exchange Commission (SEC) before attempting to influence Congress, the SEC, or the Federal Power Commission (FPC).[23] Data required by the legislation included the subject matter for which the lobbyist was retained or employed to deal with, the nature and character of compensation or employment, and the payment received.

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[19] 18 U.S.C. 1913.

[20] 1977 Commission Study, p. 166.

[21] Ibid., p. 166-168.

[22] 26 U.S.C. 501(c)(3).

[23] 19 U.S.C. 791(c).

Intensive lobbying carried on by the public utilities industry during consideration of the bill led to a further demand for investigation in the Senate, which had earlier in 1935 passed a bill (S. 2512) providing lobbyist registration. As a result, S. Res. 165, which established a special investigative committee under the chairmanship of Senator Hugo Black of Alabama, was passed. Once again, an intensive investigation was conducted which revealed the activities of public utility company agents in their efforts to defeat the legislation. However, as in earlier cases, a final report and recommendations were not forthcoming.

During the same 74th Congress, the House acted on H.R. 11663, a bill incorporating lobby registration requirements similar to those of S. 2512. Attempts to reconcile differences between the two contending bills failed in conference, and no further action was taken.

Congress continued its course of regulating lobbying on an industry-by-industry basis. The 1936 Merchant Marine Act[24] included registration provisions similar to those incorporated in the Public Utilities Holding Companies Act, while the Foreign Agents Registration Act,[25] passed in 1938 to assist in identifying the sources of Nazi and Fascist propaganda, required all persons who were agents of foreign principals to file informational statements with the State Department. The act also provided that political propaganda disseminated by such agents be so labelled.

Further efforts to regulate the Washington lobby took second place to the conduct of the Second World War.

D. SUMMARY

Over a period of 150 years, lobbying in Washington evolved from a small group of agents representing commercial interests and utilizing techniques of questionable propriety, to a diverse corps of lobbyists representing agrarian, labor and social interests as well as business, and using techniques of persuasion easily recognizable by lobbyists today. During this period, Congress expressed concern both with improprieties by lobbyists and, as years went on, their growth and evolving techniques. Congress reacted with investigations and disclosure legislation but found it difficult to resolve the conflict between regulation and petition and speech safeguards. Then as now, congressional investigations focused on alleged lobbyist wrong-doing; in doing so, they helped to reinforce the perception of lobbying as a sinister force in the governmental process.

II. IS LOBBYING A BENEFICIAL OR HARMFUL FORCE?

The previous section sketched the growth of and congressional concern with lobbying prior to approval of the 1946 omnibus disclosure statute. Clearly, Congress saw lobbying as a mixed blessing. Recurring abuses of the process raised questions about the central role of interest groups. The following discussion focuses on this important question: are interest groups and lobbyists a positive or negative force in American political life?

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[24] 46 U.S.C. 1225.

[25] 22 U.S.C. 611, et seq.

Madison's belief that interest groups—his "factions"—were an inherently disruptive force in society remains a compelling theme. Among the general public, it receives currency through journalistic accounts of lobbying. In recent years the growth of political action committees (PACs) and the belief of many that this type of political giving and spending is corrupt has cast further clouds over the political activities of groups.

Illustrative of journalistic treatments of lobbying are the following lead paragraphs from a *Time* magazine report:

> Tax law reform. Killed.
> Labor law reform. Dispatched to die in committee.
> Consumer protection agency. Killed.
> Hospital cost containment. Gutted.
> The Crude-oil tax in the energy bill. Stalled.
>
> There is normally a complex of reasons for the failure of a major piece of legislation to emerge from Congress, and sometimes it is simply that there is no clear national consensus behind it. But in these five instances, and others like them, the force that proved decisive in blocking passage this year rose out of a dramatic new development in Washington: the startling increase in the influence of special-interest lobbyists.[26]

While acknowledging that groups may be important sources of information for government officials, the *Time* report articulated often expressed criticisms of lobbying: groups exercise influence far beyond the numbers of their membership; their influence runs counter to what is preceived as the public interest; their activities are conducted in secret and are unavailble to public scrutiny; their techniques, involving campaign contributions and social relationships with officials, are unsavory if not improper or illegal.

Over the years, this common perception has been bolstered in studies by social scientists. Kay Lehman Schlozman, a professor of political science at Boston College and a witness at the Governmental Affairs Committee's 1983 inquiry into the Lobby Act, agreed with the findings of political scientist E.E. Schattschneider and others that lobby groups tend to represent the interests of the well-to-do at the expense of the poor and broad publics such as consumers.[27] Sociologist Amitai Etzioni's recent critique focused on interest groups as a divisive force in society:

> . . . if interest groups are accepted and legitimated—without an explicit limit to their power, and without provisions for effective countervailing forces—they are likely to carry their divisive pluralism to an extreme, at which point the centrifugal forces will tear apart the polity and the community.

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[26] In 1983 Lobby Hearings, p. 483.
[27] Ibid., p. 329.

> Unrestrained, interest groups will tend to hinder the development of a nationwide consensus and and of shared policies. And they will promote policies that neglect needs that are not the interest of any one group, as well as the common good. They will escalate inter-group conflict until the system is unable to function and becomes frustrating and alienating, if not violent.[28]

A recent macro-economic analysis of interest groups reaches much the same conclusions. In *The Rise and Decline of Nations,* Mancur Olson, whose previous work was responsible for a transformation in the way many analysts looked at groups, developed a broad theory seeking to show that the growth of interest groups must inevitably lead to economic plutocracy and the end of representative government. Olson's theory found that special interest groups are ". . . harmful to economic growth, full employment, coherent government, equal opportunity, and social mobility."[29] Unlike Etzioni, who recommended a package of populist-like reforms to counter the perceived threat of interest groups, Olson had no prescription for countering group domination.

In the debate over lobby disclosure, proponents of disclosure have focused on aspects of lobbying that reflect the view that it is a negative force. At his appearance before the committee, Common Cause President Fred Wertheimer asserted that:

> Lobbying . . . can . . . fundamentally undermine our system of government and public confidence in it. This can occur when methods and tools used to lobby result in improper or inappropriate influence or the appearance of such influence being exercised on government decision makers.
>
> It can occur when citizens conclude that, as a result of the activities of lobbyists and lobbying organizations, money has too much influence on decisions, representatives are too obligated to private interests to properly represent their constituents, public concerns and views are being distorted, and government decisions aren't being made on the merits.[30]

Common Cause and its allies believe that controls should be placed on Political Action Committee (PACs), and lobbyists should make public detailed reports about their activities.

In contrast to the picture of interest groups as powerful and dangerous is a body of work showing more or less the opposite. In his important study in 1962, Lester Milbrath found that not only did lobbyists believe that other factors were more important in shaping policy outcomes than lobbying, but so did his congressional respondents.[31] In Jeffrey Berry's study of public interest groups a decade and a half later, the lobbyists saw their influence largely at the margins of public policy.[32] L. Harmon Zeigler and G. Wayne Peak reached the harsh conclusion that ". . . it is hard to avoid making the comment that many of the droves of lobbyists swarming around Capitol Hill really accomplish little except to convince their own membership that the flow of dues should continue." [33] Roger Kingsley's recent study of groups lobbying on behalf of the handicapped found that although lobbyists rated grass-roots lobbying as an important technique, only a third believed it was very effective.[34]

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[28] Etzioni, Amitai. Capital Corruption; the New Attack on American Democracy. New York, Harourt Brace Jovanovich, 1984. p. 187-188.

[29] Olson, Mancur. The Rise and Decline of Nations. New Haven, Yale University Press, 1982. p. 237.

[30] 1983 Lobby Hearings, p. 37-38.

[31] Milbrath, Lester. The Washington Lobbyists. Chicago, Rand McNally & Co., 1962. p. 352.

Although lobby groups are not very effective, according to these analysts, they nevertheless make important contributions to the governmental process. Perhaps most importantly, lobbying is a tangible manifestation of the First Amendment freedom of petition for redress of grievences. Lobbyists provide information that government officials find important in the policymaking process. Hope Eastman, a committee witness representing the American Civil Liberties Union (ACLU) highlighted this function when she testified that:

> A lobbyist's true function is to bring information to the government and take away information from the government, thereby facilitating the flow of knowledge and understanding. . . . With more information about what the government is up to, people are better able to influence policy—something which in our system of government is both legitimate and desirable.[35]

Lobbying is a representational activity that supplements the electoral process. It permits citizen participation in not only legislative affairs but also in administrative matters. Lobbying legitimates emerging groups; the move from protest group to interest group signifies political maturity and commitment. Lobbying contributes to political socialization by educating group members about government and keeping then informed about governmental decisions. Berry found this to be an especially important contribution: "The [public interest groups] not only activate supporters and constituents, but they provide meaningful channels through which participation can be directed." [36] Lobbying is a self-regulating activity; Milbrath illustrates this belief of many classical pluralists when he asserts that:

> This natural self-balancing factor comes into play so often it almost amounts to a law. . . . When groups push on both sides of an issue, officials can more freely exercise their judgment than when the groups push on only one side.[37]

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[32] Berry, Jeffrey. Lobbying for the People. Princeton, Princeton University Press, 1978. p. 276-277.

[33] Zeigler, L. Harmon and G. Wayne Peak. Interest Groups in American Society. Englewood Cliffs, N.J., Prentice-Hall, 1972, p. 149.

[34] Kingsley, Roger P. Advocacy for the Handicapped; Interest Group Lobbying in the Nation's Capital and From the Grass Roots. A Paper Delivered at the 1984 Annual Meeting of the American Political Science Association. Washington, D.C., 1984. p. 21.

[35] 1983 Lobby Hearings, p. 26-27.

[36] Berry, Lobbying for the People. p. 288.

[37] Milbrath, The Washington Lobbyists. p. 345.

Milbrath reflects the beliefs of many analysts when he writes that, "If we had no lobby groups and lobbyists we would probably have to invent them to improve the functioning of the system." [38]

How is it possible to reconcile the views of analysts like Milbrath and Berry with those who see interest groups as harmful? Milbrath believed that the explanation could be found in the bias of the individual. The nature of influencing public policy is such a vast and complex arena that, like Rorschach ink blots, the same material may be subject to multiple interpretations, depending upon the beliefs, assumptions and experiences of the interpreter. Milbrath asserted that, "Persons who believe human nature is essentially evil seem to be able to find sinister influences everywhere; finding a few sinister influences in lobbying, they are overeager to condemn all lobbyists." [39] David Truman, a signal analyst of interest groups, believed that the way one looked at political interest groups depended upon strongly held beliefs about politics and conflict: "For those who abhor conflict in any form, who long for some past or future golden age of perfect harmony, [the] consequences of group activity are alone sufficient to provoke denunciation." [40] In contrast, Truman continues, stand those who "do not shrink from controversy and are ready to assume that politics inevitably emerges out of men's specialized experiences and selective perceptions." [41] If Milbrath and Truman are correct, then how one sees lobbying depends as much on the beliefs and experiences one brings to the behavior as on the behavior itself.

A. SUMMARY

The debate over the "goodness" or "badness" of pressure groups is much more complicated than presented here.[42] But even in this simplified form, the gulf that separates the two sides is evident. On the one hand, analysts (and much of the public) see pressure groups as powerful and divisive forces. On the other hand, pressure groups are seen as having relatively little impact on policy outcomes, and providing important mechanisms for informal representation, information exchange and political socialization, attributes that many analysts believe are important to a healthy political system.

There is no easy way to reconcile these disparate views. Some wisdom may be found, though, in the words of the well-known economist Robert Samuelson, quoted by Senator Durenberger at the start of the committee's 1983 Lobby Act hearings. Pressure groups, wrote Samuelson, are "the burden—and the glory too—of modern American democracy." [43]

The conflict over lobby disclosure reflects this complex duality. Supporters of lobby disclosure see lobby groups as both positive and negative forces. To the extent they are a positive force, they still cannot be fully trusted to act in the public interest—hence, the need for registration and reporting. To the extent they are a negative force, disclosure acts as a device to moderate their behavior by providing some public accounting of their activities.

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[38] Ibid., p. 358.

[39] Ibid., p. 352.

[40] Truman, David B. The Governmental Process. New York, Alfred A. Knopf, 1971. p. 503.

[41] Ibid.

[42] See, for example, Garson, G. David. Group Theories of Politics. Beverly Hills, Sage Publications, 1978. 215 p.

[43] 1983 Lobby Hearings, p. 2.

Those who oppose disclosure tend to see pressure groups as a positive force whose principal service is to facilitate rather than impede decisions by policy-makers. Hence, a regulation of these activities is seen as detrimental to the policy process. Opponents' arguments further complicate a resolution by insisting on the primacy of the First Amendment. Even if opponents of disclosure believed pressure groups exerted a negative influence, unless that influence could be systematically documented in the fashion that led to enactment of campaign finance laws, First Amendment freedoms must remain the primary consideration.

III. THE LOBBYIST'S JOB: FOUR TECHNIQUES

In his testimony before the Governmental Affairs Committee, Charls Walker, one of Washington's best known lobbyists, remarked:

> . . . when I am asked by students, "How do you get a bill through Congress?" I respond that it is very simple to do. You just have to convince a majority of the Members of the House and a majority of the Members of the Senate that what you are for is good for his or her constituents, and for the country; and what you are against is bad for his or her constituents.
>
> I said it is easy to state [but] not easy to do.[44]

Walker's statement touches on one of the reasons lobbying has long been regarded as a somewhat mysterious profession (with accompanying sinister overtones): the objective of special interest representation may be quite clear, but the route to obtaining that objective—the work of the Washington lobbyists—is neither easy nor clear. What, exactly, do lobbyists do? This section reviews four significant components of lobbying—research, direct communications, grass-roots lobbying and the raising and giving of campaign contributions—that constitute a large portion of the lobbyist's job. This section relies for its information on what lobbyists, themselves, have said about what they do, and how analysts have interpreted what lobbyists have said and done.[45]

A. The Foundation of Influence: Intelligence, Information and Research

The public perception of lobbying is shaped largely by two highly visible activities: direct communications between lobbyist and government official and indirect communications in the form of grass-roots lobbying. Often overlooked are the efforts behind these activities—the gathering of information and the preparation of research, both political and technical, that sets the stage for other activities. In testimony before the committee, Schlozman and her colleague,

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[44] Ibid., p. 212.

[45] See for example, Milbrath, The Washington Lobbyists. Berry, Lobbying for the People. Schlozman and Tierney, More of the Same: Washington Pressure Group Activity in a Decade of Change. Kingsley, Advocacy for the Handicapped.

John Tierney, presented data showing that lobbyists rate the presentation of research or technical information as the fourth most common of twenty-seven influence techniques, more common than making contributions, developing coalition or mounting grass-roots campaigns.[46] According to Schlozman and Tierney, lobbyists spend more than a quarter of their time and resources preparing and presenting research results. Only direct contacts with officials and testifying at hearings take up more time and resources.[47] Much the same was found twenty years ago in Lester Milbrath's study, *The Washington Lobbyists,* where lobbyists ranked research presentation second or third among fourteen tactics.[48]

Lobbyists believe that this activity has become more important over time as government has grown and issues have become more sophisticated and technical. Schlozman and Tierney quote one respondent stating, "The lobbying process has become more complex and requires more sophistication. . . . Now a lobbyist has to be more articulate about the issues." [49] Another lobbyist states:

> Insofar as a great deal of the legislation we deal with is technical, we're doing a lot more providing of research results and technical information. We often think of ourselves as educators. Up until ten or twelve years ago, the issues were not so technical and complex. As the issues increased in technicality, no one congressman could be expected to know all the technical information about the issues. As a result, there is greater reliance on staff by congressmen, and, in turn, on special interest groups for information.[50]

In addition to the time and resources devoted to research, lobbyists expend considerable resources to conduct information and intelligence-gathering activities. Political scientist Norman Ornstein, a committee witness, explained in a 1977 study that, "With several hundred executive agencies and congressional panels continually formulating regulations, provisions, and laws that affect individuals and groups, the job of simply keeping up with political activity relevant to a group's interest can be a massive one, even for a group with relatively narrow interests." [51] "Keeping up with political activity" means a variety of tasks: monitoring the activities of relevant government offices; monitoring activities in the courts and their implications for policy changes; monitoring developments on Capitol HIll; reading the major newspapers, newsletters and other periodicals that cover an issue; maintaining contacts with individuals in and out of government who are "policy leaders" in an issue area; and keeping up with one of Washington's most refined products: "gossip and idle chatter." [52] Charls Walker underscored this activity in a 1978 interview with reporter Elizabeth Drew:

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[46] 1983 Lobby Hearings, P. 365.

[47] Ibid.

[48] Milbrath, The Washington Lobbyists, p. 228.

[49] 1983 Lobby Hearings, p. 365.

[50] Ibid.

[51] Ornstein, Norman J., and Shirley Elder. Interest Groups. Lobbying and Policymaking. Washington, Congressional Quarterly Press, 1978. p. 54.

[52] Ibid., p. 56.

> I keep trying to see if there's anything behind the smoke that I ought to know about. I'm trying to find out, by talking to people, by my clients' talking to people. I don't know—you just keep going around and talking.[53]

An illustration of the kind of research conducted by lobby groups is provided in a recent study of Common Cause. The Common Cause staff describes the research needed to develop an issue position as a three-step process: library research to review existing policy research in an area, interviews with policy experts and other interest-group leaders, and, finally, position development. The position may not be the ideal policy choice, but it is the one that makes the most sense in the prevailing political context. Thus, in this kind of research, the principal skill is the "political interpretation of technical data." [54]

Another facet of the Common Cause research operation is to provide expertise on technical issues to friendly Members of Congress, and like other interest groups, to assist Members by writing speeches and drafting legislation for them. As one example, in 1974 Common Cause wrote a document titled "Report on House Committee Chairmen" that played a role in calling into question the seniority system by which Members ascended to committee chairmanships. Common Cause opposed this system, and its report, written more as a legal brief than in a propagandistic style, was said to have contributed to the unseating of three House incumbent chairmen and helped call attention to the freshmen Congressmen elected that year as a new center of power in the House.[55]

B. DIRECT LOBBYING: MAKING IT THE OLD-FASHIONED WAY

During the committee's 1983 lobby hearings, Maurice Rosenblatt, a veteran Washington lobbyist, told the Committee:

> I still think that the lobby is substantially one man, one buttonhole. It is that personal eye-to-eye contact that has the maximum effect.[56]

Rosenblatt's assertion is probably correct; at least other lobbyists believe it is correct. Schlozman and Tierney's recent study found that direct lobbying ranked second among twenty-seven lobbying techniques, according to responding lobbyists. It ranked first in time and resources lobbyists devoted to lobbying tasks. These findings agree with similar findings by Milbrath in his 1963 study and by Berry in his 1977 study of public interest lobbyists.

One may speculate on at least three reasons why direct lobbying remains the technique of choice—despite the development of sophisticated grass-roots techniques. First, it allows the lobbyist to know for certain that his message had been delivered and minimizes the possibility that the message was misunderstood. It also offers the opportunity for immediate feedback from the recipient.

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[53] In Cigler, Allan J., and Burdett A. Loomis, eds. Interest Group Politics. Washington, Congressional Quarterly, p. 250.

[54] McFarland, Andrew S. Common Cause; Lobbying in the Public Interest. Chatham, N.J., Chatham House, 1984. p. 84-85.

[55] Ibid., p. 132-133.

[56] 1983 Lobby Hearings, p. 220.

Second, it provides the opportunity for direct association with the official and reinforces the personal relationship between lobbyist and official. Third, it provides evidence to the lobbyist's client that the lobbyist is on the job and that he has an entree to those with the power to solve the client's problems.

What makes a lobbyist successful at this type of lobbying? In Elizabeth Drew's profile of Charls Walker, four qualities of Walker and his approach to his work stand out as contributing to his success and reputation as one of Washington's more prominent lobbyists. First, Walker is depicted as gregarious, but shrewd:

> Walker has a combination of talkativeness, expansiveness, energy, and sheer enjoyment of the sport of influence—knowing what is going on, trading information, causing things to happen—which makes for popularity in Washington. . . . The expansiveness helps him get around, and also serves as a bit of camouflage. Walker's purposes are deadly serious. . . .[57]

Second, in his years in Washington, Walker established a professional relationship—and in some cases a personal friendship—with officials who determined public policy in areas where his clients have an interest. Over the years, these relationships broadened into "an impressive array of networks."[58] Third, Walker provides services for not just his clients, but for government officials who call on him for assistance. He relates:

> If I get a call from any one of about fifty members of Congress, Democrats and Republicans, at this moment, saying, "Charlie, could you have a speech for me by ten tomorrow morning" on a subject on which I have some expertise . . . . I'll have it there.[59]

Even though this service may produce no immediate benefit to Walker or his clients, it affirms Walker's subject expertise and helps to establish a bond between lobbyist and official. Fourth, Walker is depicted as being adept at "stroking the client," a process explained as follows:

> The Washington influencer . . . not only must keep informed but also must convince his clients that he is informed, is on top of things. Part of his job is to calm the clients' anxieties, and he spends a lot of time on the telephone doing this. He must assure the clients that their confidence has been well invested. He cannot entirely explain the mysteries of Washington to them—it is, in fact, in his interest to keep the workings of Washington a bit mysterious—but he can bring news from the front, and they can have the satisfaction of knowing that their man is on the job, and they can glean from him tidbits that they can have the pleasure of passing along. . . .[60]

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[57] In Cigler and Loomis, Interest Group Politics, p. 220.
[58] Ibid., p. 218.
[59] Ibid., p. 229.
[60] Ibid., p. 231.

The qualities that make Walker successful do not, of course, apply in all cases but they are characteristic, to a greater or lesser degree, of a lobbyist whose strength is in personal communications.

C. INDIRECT LOBBYING: CULTIVATING THE GRASS-ROOTS

Grass-roots lobbying is not a new technique. It dates at least from the start of the century and was largely responsible for the prohibition on lobbying with appropriated funds, enacted in 1919. But in recent years, it has become more popular and its use has increased. There are three reasons for this growth. First, advances in technology, like highspeed laser printers, have made large-scale mailings easier and faster to distribute. Second, advances in statistical analysis and demographic targeting have increased response rates. Third, government officials, especially Members of Congress to whom most grass-roots lobbying is directed, have become increasingly sensitive to constituent pressures.

Analysts believed for many years that mail that was obviously orchestrated had little effect in influencing Members' decisions. But Schlozman and Tierney provided evidence in their testimony to suggest that this is not the case: ". . . many of our respondents indicated that, if communications arrive in sufficient quantity in congressional offices, they will be heeded no matter how orchestrated they seem." [61] As an illustration, they point to one lobbyist who told them that Members believe that someone who can come into a Member's district and convince hundreds of people to sit down and write their congressman—or simply sign their name to a postcard—can be powerful enough to influence voters' decisions on election day.[62]

Another unexpected finding was reported by Rober Kingsley in his recent study of lobbying by organizations representing the handicapped. Lobbyists told Kingsley that they considered grass-roots lobbying an important technique but they also believed it was only moderately effective. Kingsley explains this as a reflection of the relatively new groups that comprise this lobby, whose grass-roots efforts are managed by young staffers inexperienced in the use of computer technology.[63] Another possible explanation has to do with what analysts refer to as solidary benefits—the intangible rewards of comradeship that come from joining a group of like-minded individuals. Since grass-roots lobbying involves all or many of the group in a collective effort (unlike direct lobbying), this technique can be seen as fostering group cohesion and contributing to the maintenance of the group. Kingsley's groups may be willing to sacrifice high levels of effectiveness to enhance membership cohesion.

Berry noted three categories of letter-writing campaigns: the mass appeal, characterized by newspaper advertisement urging the public-at-large to write their Congressman; appeals to the group's members through the group's newsletter; and appeals to a selective portion of the membership.[64] Common Cause provides an illustration of how these types of grass-roots activities operate. The group has developed over the years a strategy they refer to as "insider-outsider lobbying" that utilizes the Washington lobbyists, the field staff and volunteers. In this plan, the Common Cause lobbyists and the group's top leaders decide the strategy on a legislative issue. Part of the strategy includes decisions about when to call an "alert" on an issue. An alert is a request from the Washington headquarters to a member to contact a legislator or official. Depending on strategic decisions, one of three levels of alerts may be called: a "membership alert," in which all members are asked to write; an "activist alert" which calls on a subgroup of 11,000 activists; or a "specialty alert" which calls on selected subgroups of activists. Although the Washington lobbyists participate in strategic decision-making, most of the grass-roots operations are managed by headquarters volunteers who are responsible for contacting group members with instructions to contact government officials.[65]

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[61] 1983 Lobby Hearings, p. 357.

[62] Ibid.

[63] Kingsley, Advocacy for the Handicapped, p. 22.

[64] Berry, Lobbying for the People, p. 235.

Reflecting the growth of lobbying in general, the popularity of grass-roots lobbying has spawned its own "boomlet" in direct-mail firms. Because they claim expertise in the sometimes bewildering areas of computer technology and demographic targeting, these firms are called upon by groups who have little or no experience in this region, or who, for one reason or another, do not care to undertake this activity by themselves.

The president of one these firms, Robert Smith of Targeted Communications in Fairfax, Virginia, told the committee that the growth in grass-roots lobbying reflects an increasingly well-educated public that is distrustful of ceding decision-making powers to others. Rather, these people yearn for direct participation in decision that have important consequences on their lives. According to Smith, they welcome the opportunity to communicate with government officials afforded by a grass-roots lobby campaign.[66]

Smith also commented on the particular concern of the committee that certain direct mail techniques—facsimile stationery and broad membership proxies—were intentionally deceptive. In the case of facsimile stationery, a letter-sized sheet bearing the respondent's letterhead and containing a pre-printed message is included in the direct-mail package. The respondent is requested to use this prepared material in a written communication with a Congressman or other official. In the case of membership proxies, the respondent is requested to sign a form authorizing the lobby group to send messages about public policy issues to officials over the respondent's signature. The respondent does not necessarily know exactly what the message will say or when or to whom it will be sent.[67] Smith asserted that both these problems were self-correcting since most Congressmen were capable of discerning and discounting orchestrated mail campaigns. In the case of proxies, Smith said, lobbyists are already assumed to hold the membership's proxy because of the lobbyist's representative role; proxy mailings are but an extension of that authority.[68]

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[65] McFarland, Common Cause, p. 64-65.
[66] 1983 Lobby Hearings, p. 214.
[67] Ibid., p. 421-422.
[68] Ibid., p. 216-218.

D. POLITICAL FUNDRAISING AND CONTRIBUTING AS A LOBBYING TECHNIQUE

Lobbying and campaign contributions can be viewed as two sides of the same coin—the effort to influence public policy. By contributing to a candidate, lobbyists show their support for the philosophy, ideology and issues the candidate stands for. Campaign contributions are sometimes seen as a reward for assistance provided by an incumbent Congressman to the pressure group or for simply being in agreement on policy questions. For a challenger—who usually has a more difficult time raising funds to run for elective office—pressure group contributions can made a vital difference on election day; the lobbyist making the contribution sees it as an additional technique that may facilitate his efforts at special pleadings. Political Action Committees (PACs), the statutorily-created and regulated vehicle for soliciting and contributing funds to candidates for Congress, are, arguably, the most controversial of the lobbyist's techniques. Since their modern incarnation in the post-Watergate reform era, their growth has paralleled the explosion in pressure group activities. Those who support PACs say that they offer individuals and organizations a legitimate and well-organized way to directly participate in elections beyond the voting booth, and that PAC contributions have little effect on Members' decisions. Those who oppose PACs say that they are a corrupting influence intended to buy votes.

PACs developed in response to Federal prohibitions on direct corporate and union donations to political candidates. By raising voluntary contributions from their members, these groups and others can provide war chests with which officials of those organizations can support their political friends and oppose their political enemies. Whereas an individual citizen may contribute up to $1,000 per candidate, per election and up to $25,000 for all political contributions in a year, a PAC may donate up to $5,000 per candidate, per election, with no annual ceiling at all. In 1974, some 608 PACs contributed $12.5 million to candidates for the U.S. Congress; in 1984, 4,009 PACs—representing business groups, trade associations, labor unions, ideological and issue groups, and membership organizations—contributed $105.3 million to House and Senate candidates.

Raising and contributing large amounts of money to politicians who are either supporters or potential supporters of an interest group's agenda has been institutionalized through the PAC, and so has become a powerful and important technique of the lobbyist. In recent years, campaign fundraising parties hosted by lobbyists have become an election year mainstay. For lobbyists, these parties offer more than the opportunity to raise campaign money. One analysis makes the point that:

> Because fund-raisers are not just attended by representatives of special interests, but also frequently are organized by them, they are more than just another campaign endeavor. Directly, or indirectly, they are lobbying events as well.[69]

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[69] The Washington Lobby, 4th ed. Washington, Congressional Quarterly, 1982. p. 63.

Just how important these fundraising affairs are perceived to be is illustrated by a recent *Wall Street Journal* profile of the motion pictures industry lobbyist, Jack Valenti. A principal charge against Mr. Valenti by adversaries from the television industry was that Mr. Valenti

> . . . curries favor with legislators behind the scenes by acting as a political fund-raiser. The executives allege, for example, that Mr. Valenti arranged a fund-raiser, held in Hollywood . . . for ten Democratic senators during a legislative fight last October between the studios and the networks.[70]

It is difficult to tell if Mr. Valenti's opponents' concern over his activities is stimulated by their own perspective of the contested issue, or a more general concern over current practices in campaign fundraising.

The subject of PACs and political fundraising created controversy at the committee's Lobby Act oversight hearings. Voicing opposition to PACs was Fred Wertheimer of Common Cause:

> The single most important factor . . . in undermining public confidence in the integrity of Congress and its ability to make decisions on the merits, is the role being played by PAC contributions . . . PACs are generally tied to groups that regularly conduct organized lobbying efforts, and campaign contributions are an integral part of these efforts . . . . PACs, through campaign contributions, are creating a higher obligation for our representatives, an obligation to serve PAC interests, first and foremost.[71]

Common Cause stands in the forefront of efforts to curb the power of PACs through a system of public financing for congressional elections and the elimination of perceived loopholes in statutes governing campaign financing.

The case for PACs was argued by Charls Walker, who asserted that the impact of PACs on legislation had been overstated: "On the big issues, it is swamped by other factors, especially the Members' perception of what is good for their constituents and what is good for the country." [72]

PACs were also defended by Michael Malbin, a resident fellow at the American Enterprise Institute and a long-time analyst of PACs and campaign financing. In this testimony, Malbin responded to what he characterized as three false "assumptions" expressed by advocates of legislation to limit the role of PACs: first, that the current level of interest group contributions to congressional candidates is a new feature on the political landscape; second, that PAC contributions exercise "undue influence" over legislation; and, third, that limiting direct contributions to candidates will reduce the role of interests groups.[73]

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[70] Landro, Laura. Hollywood's Lobbyist, Jack Valenti, Upstages Industry's Opponents. Wall Street Journal, October 2, 1984. p. 20.

[71] 1983 Lobby Hearings, p. 39.

[72] Ibid., p. 229

[73] Ibid., p. 114.

On interest group involvement in American politics, Malbin asserted that based on the "current and historical role of groups," economic interest groups have always played an important role and "PACs, if anything, have broadened the process, decreasing the power of the few biggest players." [74]

On the relationship between PACs and legislation, Malbin believes that while there is some correlation on "speciality bills," there is "little connection on major bills that gain public attention." [75] The bills that do show some relationship between political money and legislative outcomes involve groups with major Washington lobbying operations whose direct and indirect expenditures are vastly greater than their PAC spending. In these cases, Malbin believes, ". . . if no PACs gave contributions, those [major Washington pressure groups] would continue to influence roughly the same kinds of bills, with roughly the same effect as they have now." [76]

On reducing the role of interest groups by limiting campaign contributions, Malbin asserted that groups who could not make direct contributions would find other ways to participate, "and these are usually less amenable to public scrutiny and favor the largest and best organized groups over smaller ones.[77]

Although Malbin opposed restrictions on political giving, he strongly supported the section of the Federal Elections Commission responsible for collecting, collating and disclosing contributors and recipients, and he urged increased funding for this unit:

> The FEC's disclosure staff is universally praised by those of us who work with the data and are familiar with the severe budgetary constraints placed on it . . . .
>
> I believe money spent on [FEC] disclosure would be money well spent.[78]

But, Malbin argued, lobby disclosure, by its nature, is inherently less timely and so, less useful in determining pressure group influence.

E. SUMMARY

The four techniques described in this section are not, of course, the only techniques available to lobbyists. Milbrath developed a list of fourteen techniques, and Schlozman and Tierney a list of twenty-seven.

Of the four techniques discussed in this section, considerable disclosure is available for one—PACs and fundraising. Disclosure of the other three techniques is subject to the vagaries of the Lobby Act.

Direct lobbying—person-to-person communication—has undergone little alteration over the years. But the other three major techniques have gone through a variety of changes. Research methods have become more complex and sophisticated, grass-roots lobbying has been altered by technology, PACs and fundraising have been influenced by growth in the numbers of groups, dollars raised and spent, recent changes in the law and changes in the elections process.

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[74] Ibid.
[75] Ibid.
[76] Ibid.
[77] Ibid.
[78] Ibid.

Each of these techniques raises specific issues for lobby disclosure. How, for example, could a lobbyist allocate time or costs to research, only a percentage of which will be used for lobbying? Grass-roots lobbying was exempted from coverage by the Supreme Court in the landmark 1954 decision interpreting the Lobby Act, and has been a special target for opponents of disclosure. Disclosure of PAC money is required under the Federal Election Campaign Act and its amendments; but how can it appropriately be tied to lobby disclosure? Direct lobbying is intended to be covered under the Lobby Act, but presents problems of interpretation and scope. For example, how could time and costs be allocated for social events? Similarly, how could contacts with staff be covered? Resolutions to these questions have yet to be forthcoming.

CHAPTER TWO

THE SCOPE OF PRESSURE GROUP ACTIVITY

The previous chapter sketched a history of lobbying, early efforts at lobby disclosure prior to the passage of the 1946 Lobby Act, a discussion of whether lobbying is a positive or negative force, and several techniques of modern lobbying that comprise the lobbyist's job. This chapter documents the growth of lobbying in terms of the increase in the numbers of lobbyists and interest groups in Washington, and the breadth of lobbying in terms of lobbyist activity in regions of government other than Congress. The chapter concludes with brief discriptions of the several statutes that govern lobbying.

I. THE GROWTH IN THE NUMBERS OF LOBBYING GROUPS

There was little doubt among those who testified at the committe's hearings on oversight of the lobby disclosure law that the number of groups and individuals engaged in lobbying in Washington has risen substantially in recent years. Because of the widely criticized inadequacies of the current disclosure statute, one must rely to a large extent on other sources of information in attempting to gauge the extent of lobbying activity. For example, with respect to Washington-based associations, the city is now the leading association headquarters city in the nation. Twenty-nine percent of all national non-profit associations are located in Washington, up from nineteen percent in 1971. More than 4,000 individual corporations keep representatives in Washington. In ten years, the membership in the District of Columbia Bar has more than tripled, from 10,925 in 1973 to over 37,000 in 1983; the number of out-of-town law firms with branch offices in Washington has grown from 45 in 1963 to 247 currently.[1] A 1978 *Time* magazine account estimated that the number of lobbyists had grown from 8,000 to 15,000 during the previous five years.[2] Political scientist Norman Ornstein characterized this growth to the committee as a "literal explosion of lobby groups and activities . . ." [3]

This growth was documented further by the research of Schlozman and Tierney, who presented their findings to the committee. Based on interviews with 175 representatives of a cross-section of pressure groups, they concluded that forty percent of the organizations that maintained an office in Washington did not exist prior to the 1960s; indeed, twenty-five percent have been founded since the beginning of the 1970s.[4] In addition to their finding that there were many new organizations, they also found that there were many more established organizations with recently opened Washington offices:

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[1] Salisbury, Robert H., John P. Heinz, Edward O. Laumann, and Robert L. Nelson. Soaking and Poling Among the Movers and Shakers: Quantitative Ethnography Along the K Street Corridor. A paper presented at the 1984 Annual Meeting of the American Political Science Association. Washington, 1984. p.3–4

[2] The Swarming Lobbyists. Time magazine, v. 112, Aug. 7, 1978. p. 15.

[3] 1983 Lobby Hearings, p. 172.

> In the past two decades there has been a massive immigration to Washington of organizations that had previously been outside of politics. In light of the high organizational birthrate and the movement of organizations to Washington, it is clear that the world of Washington lobbying encompasses many more organizations than in previous years.[5]

Furthermore, Schlozman and Tierney found that eighty-eight percent of those surveyed claimed that their group was more active in lobbying-related pursuits than it had been in the past.[6] From the work of Schlozman and Tierney and other researchers, one appreciates not simply that lobbying in Washington has grown in recent years, but that it has grown enormously.

II. THE GROWTH IN DIVERSITY OF LOBBYING GROUPS

Traditionally, it has been those interest groups organized around economic concerns that have been active in lobbying activities. Business and labor have been in the past and are today the predominant players in the lobbying arena. Former Representative Tom Railsback told the committee that he had withessed substantial increases in lobbying by business and labor during his sixteen years in the House:

> During my 16 years in Congress, there was a dramatic increase in lobbying. As a result of the energy crisis in the early 70s there developed an immediate concern about regulating prices, about developing alternative sources and then a concomitant reaction by the environmentalists urging restraint.
>
> Defense spending, which during the 60's was not subject to line item scrutiny, all of a sudden following the Vietnam War became subject to challenge and meaningful oversight. Weapons systems which would have been approved without much congressional debate all of a sudden became the subject of intense lobbying. In my own experience as a member of the House Judiciary Committee, I viewed an enormous escalation in lobbying on such esoteric issues as copyright revision, patent reform, and a proposed overhaul of the bankruptcy laws that pitted the credit industry against some consumer groups. Also, an effort to change the anti-trust laws to permit contributions or claims deductions by co-defendants, depending on the circumstances in anti-trust conspiracy cases. Even more recently, hearings have been held on legislation resulting

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[4] Ibid., p. 125.
[5] Ibid.
[6] Ibid., p. 129

> from the *Universal City Studios, Inc.* v. *Sony Corporation,* which would result in royalties to successful copyright claimants from the manufacturers of video cassette recorders and audio recorders and blank tapes. All of these issues I just mentioned involve large economic stakes.
>
> In addition to those issues assigned to the House and Senate Judiciary Committees, one has only to follow the activities of the Senate Finance Committee and the House Ways and Means Committee relating to taxation or trade to observe tremendous lobbying activity. One has only to look at the Senate and House Commerce Committees to see great concern evidenced about communications, health, railroads and energy or look at the House and Senate Banking Committees to observe the legislative battles being waged by different segments of the financial industry.[7]

Former Congressman Railsback confined his discussion to economic interests. But, as noted earlier, one of the by-products of the social ferment of the 1960s and 1970s was the growth of interest groups organized more on the basis of shared philosophical or ideological values than on common economic interests. Many of these are offspring of the civil rights and anti-war movements of the 1960s and seek to promote civil rights protections for other groups and classes of citizens (e.g., women, Hispanics, homosexuals, the handicapped). Other groups are organized around common belief in a particular issue, seeking to influence public policy to promote or oppose such matters as abortion, gun control, and legalization of marijuana; these are the so-called single-issue groups that have been much in evidence in the last five years. Finally, there are groups that seek to defend or promote the interests of all citizens—the "public interest" as opposed to the narrow special interest. These "diffuse publics having no narrow stake in a controversy" organize around broader, more intangible goals than traditional economic interests; they include such issues as the environment and good government or such broad constituencies as consumers and taxpayers.[8]

In addition to the wide range of lobbying activity on behalf of domestic social and economic policy, there has been growth in lobbying activity on behalf of foreign policy objectives. This type of lobbying usually takes two forms: those employed by and representing the interests of foreign governments or concerns, and domestic groups with special concerns about foreign policy. In the latter case, business and labor groups may lobby for tariff protection for American products (such as the auto manufacturers, and workers, quest for import restrictions on Japanese cars) or to promote trade with foreign nations. This type of lobbying also takes the form of American ethnic groups who seek to influence American foreign policy to conform to the interests of their motherlands: American Jews and Arab-Americans lobby to tilt foreign policy in the Middle East, Cuban-Americans lobby for sanctions against Castro's Cuba, and Greek-Americans organize to restrict United States aid to Turkey.[9]

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[7] 1983 Lobby Hearings, p. 205-206.

[8] Ibid., p. 124.

The other type of foreign policy lobbying involves paid agents of foreign governments or business interests within those nations, with increased foreign aid or arms sales often the desired policy objective. Virtually every foreign government has an advocate in Washington and committee witness Norman Ornstein testified to the growing influence of these lobbyists:

> I think one of the most significant changes that has taken place in the past ten years has been the tremendous growth in foreign lobbying. As Congress has become more assertive in foreign policy, foreign governments, foreign factions, and foreign businesses have all discovered the ease of access to Congress and have increased their activity, open and otherwise, on Capitol Hill. There is little doubt, for instance, that Syria and other interests in the Middle East have lobbied Congress on the American Marine presence in Lebanon. Every faction imaginable had lobbied Congress on the American presence in Central America.[10]

Foreign governments seem to prefer advocates who are former Members of Congress and Executive Branch officials; these individuals' knowledge of how government works and inside contacts seem particularly attractive.

Yet another sector whose lobbying activities have expanded is comprised of non-profit, charitable organizations. These groups include charities, religious, cultural, educational and scientific organizations. Because of their expertise in particular fields and concern with humanitarian values, many of these groups seek an active role in policymaking. Examples are numerous: the American Lung Association lobbied against certain efforts to amend the Clean Air Act, hunger and nutrition research groups were involved in the Senate debate over the food stamp program, and church groups have been involved in civil rights and anti-war activities for years.[11]

For many, this trend towards greater numbers of diverse groups is unlikely to diminish. One analyst of American politics forsees that: ". . . as the cognitive and communicative capacities of Americans increase in conditions of relative prosperity, bedrock economic issues recede in importance and Americans will choose to align themselves in more and more intricate patterns of affiliation, patterns which create the possibility, as well as other preconditions, for demands of all sort—for recognition, for access, for subsidy, for ancillary services—based on these affiliations." [12]

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[9] Ornstein, Interest Groups, Lobbying and Policymaking, p. 51-52.

[10] 1983 Lobby Hearings, p. 115-116.

[11] The Washington Lobby, 3rd ed. Washington, Congressional Quarterly, 1979. p. 177-178.

[12] Polsby, Nelson. The Prospects for Pluralism in the American Federal System. Trends in Unofficial Public Sector Intermediation. In the Costs of Federalism. Golembiewski, Robert T. and Aaron Wildawsky (ed.) New Brunswick, N.J., Transaction Books, 1984. p. 30.

III. REASONS FOR THE GROWTH IN NUMBERS AND DIVERSITY OF LOBBYING GROUPS

The question of why lobbying has grown and developed to the point it has is a complex one. No single explanation or theory can easily explain this phenomenon. However, analysts can generally agree that the coincidence of a number of events has been a contributing factor. These events include the growth of government in general and in particular its expanded role as manager of the economy and provider of social services; increased affluence and education; advances in communications technology; and to a lesser degree, changes in the political parties, in the elections process and in Congress.

Beginning with the flood of New Deal recovery legislation enacted during the decade of the 1930s and continuing through the 1970s, the size and scope of Federal Government activity began an expansion which continued almost uninterrupted, during both Republican and Democratic administrations, until slowed by the Reagan Presidency. This accretion of responsibilities, perhaps more than any other single factor, sparked a parallel evolution in the growth of pressure groups which formed around the new government policy initiatives, encouraged by government-provided benefit packages.

Kingsley's account of the formation of groups representing handicapped individuals illustrates one small sector of pressure group development. According to Kingsley, the handicapped rights movement had its origins in the civil rights struggles of the 1960s. Early achievements included the Architectural Barriers Act of 1968 and the Education of the Handicapped Act in 1970. Political action in support of policy goals took the form of working through official legislative, judicial and regulatory channels rather than involvement in protests and acts of civil disobedience.[13] Through alliances with Members of Congress and support from executive agency offices, the groups have been largely successful in forestalling budget cuts proposed by the Reagan Administration: "For the fiscal year (FY) 1981-1984 period, appropriations for programs in the Department of Education's Office of Special Education and Rehabilitative Services increased by nine percent while overall Department funding rose by only four percent." [14] Other recent major accomplishments include the Education of the Handicapped Act Amendments of 1983 and the Telecommunications for the Disabled Act of 1982.

In addition to the growth of government-sponsored and administered programs directed to a special group or class, the Federal Government has grown to become an enormous dispenser of grants and contracts—the figure now stands at more than $120 billion a year. Groups may form to support policy initiatives when they believe the initiative's success will result in the award of a contract or grant. If the policy initiative is controversial, groups may form in opposition, not because they desire the award of a contract or grant, but because of opposing philosophical or ideological beliefs.

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[13] Kingsley, Advocacy for the Handicapped, p. 9.

[14] Ibid.

In the mid-1970s, for example, Rockwell International was slated to be the prime contractor for the B-1 bomber and at one point in the congressional debate over the issue, the House voted to appropriate $1.5 billion for Rockwell and its subcontractors to build five planes. Opposition to building the aircraft arose from a coalition of peace and citizens' groups. Before the debate was over, Rockwell had undertaken a large grass-roots lobbying campaign and spent thousands of dollars in legal, lobbying and public relations expenses in an effort to convince the Congress and the President to build the B-1 bomber. Although President Carter announced his intention to dismantle the B-1 bomber, the issue was resuscitated by the Reagan Administration and plans have gone ahead to build the plane with Rockwell as the principal contractor.[15]

A third way in which government growth has contributed to lobby group growth has been in the area of direct subsidies to groups themselves to participate in some form of government policymaking activity, such as rule-making. Several regulatory agencies, including the Federal Trade Commission (FTC) and the Environmental Protection Agency (EPA) have reimbursed groups for participating in agency proceedings.

Affluence and education have traditionally provided opportunities for social and economic mobility, a hallmark of the American system. These factors in turn provide a luxury of choice about ideas and values, and these choices are then often expressed in political terms, including the kinds of associations people form and the groups they join. The relative prosperity of the post-war period can help to account for the growth in the numbers of groups concerned with matters like protecting the environment and reforming the political system—"luxury" issues above and beyond personal economic concerns and requiring a surfeit of time and/or money. Likewise, prosperity has enlarged the numbers of potential group organizers. Two analysts of pressure groups, Allan J. Cigler and Burdette A. Loomis, make the point that:

> The 1960s was a period of opportunity for entrepreneurs, as college enrollments skyrocketed and powerful forces such as civil rights and the antiwar movement contributed to an "idea-orientation" in both education and politics. Communications-based professions, from religion to law to university teaching, attracted social activists, many of whom became involved in the formation of groups.[16]

To another analyst, Nelson Polsby, education and affluence have gone hand-in-hand with technology (release from the constraints of the day-night cycle in the form of universal access to electricity, and the winter-summer cycle in the form of heating and air conditioning) and changes in the social order (release from the behavioral restrictions imposed by living in the confines of the nuclear family, and release from restrictions on the maintenance of gender roles) to allow people to "choose (rather than inherit) the groups that will express their lifestyles and interests in the political arena." [17]

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[15] For the 1976-1977 debate, see Ornstein, Interest Groups, Lobbying and Policymaking, p. 187-220.

[16] Cigler, Allan J., and Burdett A. Loomis. Introduction: The Changing Nature of Interest Group Plitics. In Cigler, and Loomis, Interest Group Politics, p. 23.

Technology—particulary the communications revolution—has played a significant part in the current pressure group explosion. On one level, it has shortened distances and compressed time; it has facilitated the rapid transfer of information between group leaders and followers. Likewise, it has allowed rapid mobilization of group resources; using computers and high-speed printers, large quantities of mail to a government official can be generated virtually overnight. Similiary, contributions can be solicited, collected, and distributed.

On another level, communications technology, especially television, has even more far-reaching implications for pressure group formation. Television—found in ninety-eight percent of American households, more than have telephones—brings the complexities of modern living directly into peoples' homes. Under certain circumstances, television's message not only informs, but intensifies the feelings people have. To illustrate, Vietnam is called the nation's first television war, as images of fighting and turmoil were broadcast only hours after they took place. As the war dragged on, people came to see a disparity between network reports and progress reports from government officials:

> The camera magnified the length of the war. . . . The war played in American homes and it played too long. It made the American involvement there seem endless, which it was.[18]

With the Tet offensive in 1968, when, for the first time, "American cameras could film the force and resilience and toughness of the enemy," [19] public opinion began to swing decidedly against the war. Television coverage of the war then became a powerful asset of the anti-war movement. Other social and political movements have gained impetus from television broadcasts: the environmental movement gained momentum after CBS broadcast the documentary "The Silent Spring of Rachel Carson" in the early 1960s. In 1983, a television movie focusing on missing children helped mobilize groups to push for governmental action on this issue.

A final element that can help explain the current surge of pressure group activity has to do with changes in Congress, in the political parties and in the electoral process.

Before the 1970s, with legislative influence more centralized in a small number of party leaders and committee chairmen, lobbyists could concentrate their efforts on a few individuals. As the locus of policymaking has expanded from the committees to the subcommittees and to the floor, lobbyists have had to increase their activities to cover the large numbers of Members who may influence legislative outcomes. Moreover, the open meetings rules of the last ten years have lowered some barriers separating Members from group pressures. Lobbyists now attend markup sessions and conference committee sessions that used to be held in closed session. In this respect, Members are no longer as insulated from lobbyists as when they were able to conduct official business behind closed doors, and pressure groups are better able to hold Members accountable for their actions.[20] These procedural changes, however, have also meant that groups have had to raise the level of their activities. Professor John Tierney testified on this subject at the committee's lobby law oversight hearings:

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[17] Polsby, The Prospects for Pluralism in the American Federal System p. 30.

[18] Halberstam, David. Televising the Vietnam War. In Grabner, Doris A. Media Power in Politics. Washington, Congressional Quarterly Press, 1984. p. 29.

[19] Ibid., p. 293.

> The many changes in Capitol Hill over the past decade—the proliferation of subcommittees, the greater importance of policy entrepreneurs both among elected representatives and staff, the requirements for open meetings, the rapid turnover in congressional membership—all of these things have altered the environment of legislative lobbying and have left pressure groups bent on influencing officials with little choice but to escalate the range and volume of their activities.[21]

Some analysts believe that the decline of the political parties as a brokering force in national politics has also contributed to the increasing activities of pressure groups.[22] One role of political parties is to act as an intermediary between citizens and government; the parties mediate and aggregate citizen demands and thus enable government to focus its attention on what the President and majorities in Congress perceive to be society's important problems. In the past, the parties have done this through the building of coalitions: for example, the New Deal coalition of blacks, white ethnics, blue collar urban workers and liberals forged by the Democrats in the 1930s. But the turbulent social and economic changes of the last twenty years have thrown once-stable coalitions into disorder, challenging long-held assumptions without replacing them with innovative ideas of governing. The absence of an ideology to sustain new stable coalitions to address new issues has reduced the parties' effectiveness in representing group demands and has encouraged the groups to appeal more directly to government officials.

Likewise, changes in the role pressure groups play in election campaigns have altered the way pressure groups see legislators. In past elections, as David Broder has observed, ". . . the parties served to screen the demands of interest groups." [23] But today, office seekers appeal more directly to the special interests, and the groups themselves—through PAC contributions and media campaigns—are more actively involved in campaigning.

IV. LOBBYING THE EXECUTIVE BRANCH

In the public eye, pressure group activities are usually tied to legislative lobbying. But largely because of the forces detailed in the preceeding sections, and certain other developments, the executive branch agencies and the White House have increasingly become a focus of lobbyists' activities.

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[20] For an early analysis of the consequences of open committee meetings on lobbying, see Herring, Group Representation Before Congress, p. 41-42.

[21] 1983 Lobby Hearings, p. 110-111.

[22] See, for example, Cigler and Loomis, Interest Group Politics, p. 17-20.

[23] Broder, David. Let 100 Single-Issue Groups Bloom—the Pains They Cause May Push Politicans Back to the Parties. The Washington Post, Jan. 7, 1979: C1, C2.

Analysts have long referred to the "iron triangle" or "subgovernment" relationships that seem to dominate policy formation: the congressional committees or subcommittees that authorize and appropriate funds for a program, the executive agency that manages the congressionally-approved program, and the universe of pressure groups that represent the program's clients and seek to influence both agency and Congress. But in recent years, this view has undergone some changes. Expanding governmental interests and increasingly sophisticated issues have enhanced the numbers of access points to the policymaking process. Furthermore, intergroup conflict and competition have forced groups into seeking alternative entrees to the process. The result is more complex and overlapping patterns of influence. As an illustration, one analyst provides this example:

> The [Army] Corps [of Engineers] had been cited as the classic case of an agency that ensured its survival and preserved wide latitude for program independence by cultivating support from interest groups and congressional committees. [Recent research] paint[s] a very different portrait, depicting an agency forced to alter its standard operating procedures in order to meet the rising tide of public concern over a deteriorating environment. The Corps adopted an aggressive program to incorporate citizens' groups and critics into the planning and decision-making stages of major projects, a substantial change from past behavior. Thus, rising conflict triggered efforts to reach a new accommodation with a changing constituency.[24]

For many years, the Office of Management and Budget (OMB) considered itself immune to pressure group politics. OMB hardly fits the mold of iron triangle or subgovernment theory. It administers no programs, as such, and has as its principal client the President. It concerns itself largely with preparing the President's budget and the internal workings of the government, and has fashioned for itself an image of professionalism and political neutrality. Yet, as former OMB director James T. McIntyre explains, the agency has become an important center for policy formation and a target for influence:

> Because of the director's personal access to the President, OMB's role in the paper loop, its governmentwide overview of Presidential policy, and its role in allocating money and staff to various executive branch departments and agencies, OMB is involved in practically every major federal decision. One would therefore look to OMB, among other executive office agencies, to communicate facts and information about an existing policy, a proposed policy, or a budget question. For instance, the number of subsidized housing units to be supported annually is usually subject

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[24] Pika, Joseph. Interest Groups and the Executive: Presidential Intervention. In Cigler and Loomis, Interest Group Politics, p. 306.

> to intense debate. If an organization were interested in seeing a certain number of units proposed by the President, it would be advisable for the organization to meet with OMB officials and present its arguments before OMB made its recommendations to the President.[25]

In the past, according to former OMB director McIntyre, the agency preferred for White House officials to meet with pressure group representatives. But in recent years, this policy has changed "because of the complexity of many [government] programs and [OMB's] need to know about the actual impact of its decisions." [26]

OMB is but one example of a trend in the executive agencies to open policymaking activities to outside influences. Other agencies encourage citizen and group participation through subsidies for appearances at agency proceedings, requirements for citizen participation in federal grant programs, and the creation of advisory committees. The creation of a formal White House Office of Public Liaison during the Nixon Administration has open a channel of access to presidential decisions for certain major population groups: women, blacks, Hispanics and others.

These developments in the agencies occurred at the same time that pressure groups were broadening and intensifying their activities on Capitol Hill. This multitude of access points to agency decision makers has enabled groups to increase their activities in that arena and develop and devote greater resources to agency activities.

V. THE SCOPE OF REGULATION: PROHIBITION, DISCLOSURE AND ACCOUNTABILITY

Since the first decade of this century, Congress and the executive agencies have sought to control pressure group lobbying through a variety of statutory and administrative measures. In addition to the omnibus 1946 disclosure act, Congress and the agencies have from time to time singled out specific groups and population segments for special consideration. In 1919, Congress forbade lobbying with appropriated funds, a move that was specifically aimed at grass-roots lobbying where agency officials contacted citizens and urged them, in turn, to communicate with Congress.[27] In addition to this general prohibition, similar statutory language began to appear in yearly appropriations legislation. In the 1930s, disclosure requirements were specified for lobbyists seeking to influence government decisions affecting utility rates and ship building policies. Late in that decade, Congress, concerned with the dissemination of Fascist and Nazi propaganda, passed legislation requiring agents of foreign governments to register with the Secretary of State. Thirty years later, in 1966, the statute was amended to focus more broadly on efforts by foreign agents to influence a range of U.S. policies. In 1984, OMB established rules for government agencies that sought to prohibit certain lobbying activities by government contractors and grantees.

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[25] McIntyre, James T. The Importance of the Office of Management and Budget. In Marcuss, Stanley J., ed., Effective Washington Representation. New York, Harcourt Brace Jovanovich, 1983. p. 137

[26] Ibid., p. 162.

[27] 18 U.S.C. 1913.

Provisions of the Internal Revenue Code cast a wide net over the lobbying activities of thousands of tax-exempt groups. Between 1934 and 1976, such groups were limited to "insubstantial" amounts of lobbying under threat of the loss of their tax-exempt status. Legislation enacted in 1976 allowed tax-exempt groups to elect a system that delineated the amount of lobbying the group could undertake based on the organization's exempt-purpose expenditures.

The 1946 Act—discussed in detail in the next chapter—was aimed at the general population of Washington pressure groups and lobbyists and sought regulation through the mechanism of disclosure. It required registration and quarterly reports by lobbyists with administrative offices of Congress and its sponsors hoped that it would provide information about hundreds of pressure groups and lobbyists.[28]

There thus exists a network of laws and rules governing the efforts of presure groups to influence government decisions. Each of these laws and rules has been the focus of controversy and criticism over interpretation, and each points up the difficulty of finding an effective middle ground between disclosure, constitutional safeguards, and the orderly administration of government.

A. LOBBYING WITH APPROPRIATED FUNDS

Since the earliest days of the Republic, Congress has concerned itself with efforts by the executive agencies to influence legislation. The advance of technology, in the guise of the telegraph, moved Congress to enact a broad statutory restriction on the use of appropriated funds for lobbying. In 1919, Members were upset with the practice of "a bureau chief or the head of a department writing letters throughout the country, sending telegrams, for this man, for that company, to write his Congressman, to wire his Congressman, on behalf of this or that legislation."[29] During debate in the House, one sponsor of the legislation related the experience of a Member who had on his desk "thousands upon thousands of telegrams that had been started right here in Washington by some official wiring out for people to wire" the Congressman.[30]

The prohibition, however, contained language that provided for communications between Members and executive branch officials at ". . . the request of any Member of Congress, through the proper channels . . . ."[31] This exception, and the difficulty in administering and enforcing the statue in the face of a burgeoning government and a Congress that, all things being equal, prefers unrestricted communication with agency officials, resulted in a law that some analysts have characterized as a "legal fiction."[32] There has never been a prosecution under the act; nevertheless, as one analyst comments, ". . . it is [not] as feckless as critics suggest." [33] The act ". . . stands as a warning against departmental efforts to mobilize grass-roots support for or against pending legislation." [34] Although the Justice Department is responsible for enforcing the act, suspected violations are usually referred to the General Accounting Office (GAO) which looks into the matter and may conduct an investigation.

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[28] Schriftgeisser, The Lobbyists, p. 77-87.

[29] 58 Cong. Rec. 403 (1919).

[30] Ibid.

[31] 18 U.S.C. 1913.

[32] Engstrom, Richard L., and Thomas G. Walker. Statutory Restraints on Administrative Lobbying—"Legal Fiction." The Journal of Public Law, v. 19, no. 1, 1970. p. 98.

For instance, in 1982, GAO looked into accusations involving a campaign by the Air Force and the Lockheed Corporation to win approval for the C5B aircraft. The GAO found apparent collusion between the Air Force and Lockheed that included meetings in the Pentagon with Lockheed lobbyists and the use of Lockheed computers to keep track of congressional votes.[35] In another instance in 1984, a Health and Human Services (HHS) official was accused of mailing letters to other government officials urging them to contact their congressman to oppose a bill that the HHS official characterized as "legal[izing] Heroin." [36]

In addition to conducting many investigations into possible abuses of the act, the GAO has frequently recommended that the act be reviewed by Congress and clarified. In an early 1984 study, GAO described the Act as "unclear, imprecise and judicially unenforceable." [37]

B. Lobbying by Federal Contractors and Grantees

One of the more murky issues left unresolved by statutory prohibitions on lobbying with appropriated funds is the question of lobbying by federal contractors and grantees. As the money the government spends on grants and contracts has grown—in 1984, it was about $120 billion in a more than $800 billion budget—interest groups of differing political and ideological persuasions demanded that government stop funding, through grants and contracts, perceived lobbying and other political activities. Common Cause, for example, charged that defense contractors used government funds to lobby Congress to approve the F-16 jet fighter. Likewise, conservative groups have urged the Reagan Administration to halt grants to a large number of groups that, conservatives claim, use the funds to promote certain political activities.

In 1984, as a response to this controversy, OMB—after a year and a half of acrimonious negotiations between the agency, Congress and a number of interest groups—issued rules for how the agencies should treat lobbying costs by nonprofit grantees and contractors.[38] At the heart of the debate were the problems that have plagued this issue for many years: where should the line be drawn that distinguishes information exchange from lobbying? Should restrictions be placed on information that government officials might find vital to the administration of a grant or contract, or to broader policy questions? Would such restrictions impinge on citizens' First Amendment rights?

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[33] U.S. Library of Congress. Congressional Research Service. White House-Congress Relationships: Information Exchange and Lobbying. Report No. 78-147 GOV by Louis Fisher, July 7, 1978. Washington, 1978. p. 50.

[34] Ibid.

[35] In U.S. Congress. House. Committee on Armed Services. Investigations Subcommittee. Allegations of Improper Lobbying by Departments of Defense Personnel of the C5-B and B1-B Aircraft and Sale to Saudi Arabia of the Airborne Warning and Control System; Report. Committee Print, 97th Cong., 2d session. Washington, Gov. Print. Off., 1982. 29 p.

[36] Richburg, Keith B. Probe Set on Letter Against Heroin Bill. The Washington Post, Oct. 5, 1984. p. A-21.

[37] Ibid.

[38] 49 C.F.R. 18260.

OMB's final rules defined four broad types of activities whose costs cannot be charged to a contract or grant: electioneering, direct lobbying, grass-roots lobbying, certain legislative liaison activities. The rules clarified three activities that were permissible: legislative requests for technical and factual information, lobbying at the State level, and lobbying or advocacy activities specifically authorized by statute. Additionally, the rules set forth certain record-keeping requirements and a certification procedure to assure compliance.

OMB's rules became final in May 1984, but questions remained about whether they would halt perceived lobbying abuses. Because the rules must be implemented on an agency-by-agency basis, they may be unevenly applied; certain agencies may interpret the rules more broadly or narrowly than others. Further, it is a commonplace that those who intend abuse will seek to circumvent whatever procedural obstacles they encounter; in other words, agency regulations forbidding lobbying may be no deterrent to those who intend to do it anyway. Finally, Members of Congress may find that the new rules inhibit the free flow of information from recipient groups, or clash with congressional decisions to encourage advocacy in the political process for certain groups. Or, Congress may feel that the issue is better addressed through legislation than by administrative fiat.

C. Lobbying by Tax-Exempt Groups

Lobbying activity by the almost 300,000 public charities and other not-for-profit groups was long governed by the rule that their tax-exempt, non-profit status would be jeopardized if they engaged in "substantial" (the term used in the tax code) lobbying. The vagueness of this standard and its susceptibility for political abuse led Congress, in the 1976 Tax Reform Act, to outline specific standards for determining whether a group was engaged in untoward amounts of lobbying. Groups were given the option of being judged under the newer guidelines or the former, vague "substantial" activity standard. Specifically, the new law set the basic level of allowable lobbying expenditures at twenty percent of the first $500,000 of the organization's exempt-purpose expenditures in a year, plus fifteen percent of the second $500,000, plus ten percent of the third $500,000, plus five percent of any additional expenditures—with a maximum expenditure of one million dollars. Grass-roots lobbying expenditures were limited to one-fourth of all lobbying expenditures, and any charitable group exceeding the spending guidelines by more than fifty percent over four years would lose its exempt status.[39]

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[39] Dressner, Howard R., and Sheila Arvin McLean. Tax Reform Act: Public Charities, Lobbying. New York Law Journal, Dec. 14, 1976, p. 1.

This plan, however, has not ended the controversy over lobbying by charities. Groups continue to argue that the restrictions placed upon them constitute an "impermissible burden" on their rights of free speech.[40] They argue further that the treatment accorded to businesses, who may deduct certain lobbying expenses as long as they are classified as business expenses, and veterans organizations, who can lobby without any limitations and still receive tax deductable donations, violate the equal protection clause of the Constitution.[41]

D. Lobbying by Foreign Agents

Testifying before the committee in 1983, Norman Ornstein drew particular attention to what he perceived as a striking increase in lobbying by agents of foreign governments. Dr. Ornstein noted that "Some of this lobbying has been indirect, and some has been deliberately hidden from public and congressional view." [42] He recommended that the statute requiring agents to register with the Department of Justice and make periodic reports of their activities be strengthened by combining it with the Lobby Disclosure Act. If such a step was taken, it would further shift the intent of the Foreign Agents Registration Act (FARA) from its original purpose—keeping track of Nazi and Facist propaganda activities in the late 1930s—to its modern mission—providing disclosure of extra-diplomatic efforts to influence American domestic and foreign policy.

The act, as amended, requires registration and the filing of detailed reports with the Justice Department by agents engaged in one of four specified activities, acting on behalf of foreign governments or principals; these activities include political activity (e.g., electioneering), public relations, collecting money, and representing the foreign principal before any U.S. official or agency (lobbying). Exemptions are allowed for commercial groups, diplomatic personnel and others. The reports must disclose detailed information on the agent, the foreign principals represented, the activities engaged in, and the type and amount of compensation received. Failure to comply with the act's requirements can result in fines of up to $100,000 and imprisonment of up to five years.

Congressional reaction to apparent lobbying abuses by agents of foreign governments has been to perodically amend the FARA. There have been seven changes to the statute since it was enacted in 1938; the most recent major alterations were in 1966 when the act's enforcement provisions were strengthened. Nevertheless, in 1974 the GAO found that filings required under the act were incomplete and tardy—in one case, by more than six years.[43] Further, the GAO report found that the Justice Department lacked procedures to insure registration of agents coming into the United States on visas and that the office directly responsible for the act—the Foreign Registration Unit—was inadequately staffed.

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[40] Robinson, Gregory E. Charitable Lobbying Restraints and Tax Exempt Organizations: Old Problems, New Directions. Utah Law Review, v. No. 2, 1984. p. 337.

[41] Ibid., 337-339.

[42] 1983 Lobby Hearings, pp. 115-116.

[43] Howe, Russell Warren, and Sarah Hays Trott. The Power Peddlers. New York, Doubleday, 1977. p. 518.

The act was the focus of attention in 1980 when a special Senate Judiciary subcommittee looked into charges that President Carter's brother Billy had improperly used his relationship with the White House in assisting the Libyan government of Col. Maummar Al Qaddafi. Billy Carter was not registered as a foreign agent when he accepted $220,000 from the Libyan government; he registered after his dealings became public and he came under pressure from the White House and the Justice Department. Senate hearings on the subject included testimony from the GAO that because of loopholes and ignorance or evasion of the law, the names filed under the act may be "only the tip of the iceberg." [44]

VI. SUMMARY

By virtually all indications, the activities of lobbyists and pressure groups have increased significantly in the last two decades. This increase is reflected in many areas: the numbers of corporations that have opened offices in Washington, the numbers of trade and other non-profit associations that have either made Washington their headquarters or opened offices here, the numbers of out-of-town law firms that have opened offices in Washington, and the numbers of public relations firms new to Washington.

Where once most Washington lobbying centered around economic interests, the last twenty years have witnessed the development of an array of groups representing social, environmental, philosophical and ideological interests.

While there is no single theory to account for this activity, a number of factors are clearly involved: growth of the Federal Government and the expansion of its influence—often as manager and provider; increased levels of relative affluence and education; advances in communications technology; and changes in Congress and in the elections process. These factors create a fertile environment for pressure group politics.

Not surprisingly, as Congress delegated decision-making authority to the executive agencies, so the agencies became the focus of increasing pressure group activity. At the same time that groups made heightened efforts to influence agency policies, the agencies themselves were making efforts to open up their decision-making processes to public scrutiny and involvement.

Although Congress periodically sought to control pressure group activities, mostly through registration and reporting requirements, none of its actions was particularly effective. In the past twenty years, the growth in numbers and diversity of pressure groups saw a similiar rise in allegations of abuse of the lobbying process, claims that "secrecy" in the lobbying process was inimical to democratic government, and the belief of many that certain lobbying activities should be restricted or at least disclosed. In response, Congress and the executive branch became engaged in a cycle of efforts—similiar to one in the 1930s—to place some controls on lobbying. These efforts included major amendments to the Foreign Agents Registration Act in 1966; a prolonged effort—from 1974 to 1980—to revise the omnibus lobby disclosure law; a significant statutory change in the permissible lobbying activities of tax-exempt charitable groups in 1976; the initiation of Federal regulations regarding lobbying by government contractors and grantees in 1984; and an increase over the last ten years in the numbers of investigations by the GAO prompted by allegations of violations of the statute prohibiting lobbying with appropriated funds.

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[44] The Washington Lobby, 4th ed. p. 155. The act also came under scrutiny during the congressional investigation into alleged influence peddling on behalf of the Korean government by Tongsun Park. See U.S. Congress. Senate. Select Committee on Ethics. Korean Influence Inquiry. Senate Report No. 95-1314, 95th Cong., 2d session. Washington, U.S. Govt. Print. Off., 1978. 180 p.

CHAPTER THREE

THE 1946 FEDERAL REGULATION OF LOBBYING ACT AND THE FAILURE OF SUBSEQUENT REFORM EFFORTS

The single most comprehensive statute regulating the activities of lobbyists is the 1946 Federal Regulation of Lobbying Act, a poorly drafted measure that has been the target for revision ever since it was approved. How it came to be approved, how it was significantly narrowed by the Supreme Court, and how subsequent efforts to strengthen it have failed point up the complexities of finding a balance between the need for disclosure and the safeguarding of constitutional freedoms.

I. ORIGINS OF THE ACT

The 1930s were an active period for those who favored lobby regulation; four major statutes sought to control lobbying by tax-exempt charitable groups, utility companies, federal ship building ventures and propaganda agents of foreign governments.

Congress' attention to lobbying activities was diverted during the war years, but as victory seemed assured it again took up the issue. In early 1945, a Joint Committee on the Organization of Congress began an inquiry into ways in which Congress could become a more effective legislature. While the Joint Committee considered changes in operations and procedures, it also spent a substantial amount of time concerned with lobbying pressures. Recommendations for including lobby disclosure as part of the Joint Committee's draft proposal for legislative reorganization came from a number of sources. The Joint Committee heard many complaints about the activities of lobbyists in the course of its hearings and several witnesses strongly urged the adoption of a disclosure law. Several panels, including the 1941 Temporary National Economic Committee and the Committee on Congress of the American Political Science Association (APSA) recommended lobby disclosure. The APSA report concluded that, "Congress is handicapped in the performance of its proper function . . . by the importunities of special-interest groups which tend to divert legislative emphasis from broad questions of public interest." [1]

The Joint Committee reviewed congressional investigations from the past twenty years, noting in particular the disclosure bills that had passed the Senate in 1928 and 1935. Moreover, by 1946 thirty-five States had disclosure laws on the books. The Joint Committee was further influenced by the activities of lobbyists in post-war Washington. In March 1946, Speaker Sam Rayburn charged from the House floor that "this town, for past six months, has been seething with lobbyists" trying to kill the Federal rural electrification program.[2] And President Truman, in his Jackson Day address that month, asserted that "my friends in Congress have got to make up their minds whether they're for veterans' rights or whether they are going to bow to the real estate lobby." [3]

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[1] In 1950 Buchanan Hearings, p. 98.

According to later testimony by the staff director of the Joint Committee, the panel was deeply concerned with the disparity between organized and unorganized interests. To the Joint Committee, the sum of all organized interests was not equal to the whole of the polity. George Galloway, the Joint Committee's staff director, testified in 1950 that the majority of the Joint Committee believed that ". . . the strongest pressures from outside are essentially minority pressures representing particular local interest or specific occupational groups." [4]

Thus, according to Galloway, the Joint Committee believed that "[t]o turn the spotlight of publicity on lobbying activities and expenditures would be a big step foward." [5] Ironically, he added, "After the lobby law had been in operation for a few years, experience would reveal any defects in it which could be corrected by amending and strengthing the act." [6]

The statutory language of the act had its origins first in the Federal Corrupt Practices Act, and second in the conference committee version of a 1936 lobby disclosure bill. This latter measure, though approved by both chambers and reported from conference, was not accepted by the House.

By 1946, Congress had been documenting pressure groups' efforts to influence legislation for over thirty-five years. Its investigations of alleged illegalities and improprieties—most frequently by corporations, trade associations and other entities of commerce—had sometimes attracted national attention. Public opinion towards lobbyists and pressure groups—hardly held in very high esteem by a nation in the grasp of the Great Depression—was further influenced by such reports as *The Pressure Boys; An Inside Story of Lobbying in America.* The author, a Washington reporter, informed his readers that "A majority of the pressure boys being hirelings of private property interests, their enormous energies and considerable talents are devoted primarily to the protection of property, sometimes by fair means and sometimes not." [7]

What is perhaps unusual is not that Congress finally passed a lobby disclosure law, but that it finally did it so quickly.

II. PASSAGE AND CRITICISMS OF THE LOBBY ACT

A bill incorporating a lobby disclosure statute as recommended by the Joint Committee was introduced and eventually approved as the Legislative Reorganization Act of 1946. Title III of the act, the Federal Regulation of Lobbying Act, was only briefly the subject of debate in the House and Senate. Of Congress' hasty treatment of the Lobbying Act, one observer later noted:

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[2] 1977 Commission Study, p. 172.
[3] Ibid.
[4] 1950 Buchanan Hearings, p. 99.
[5] Ibid., p. 100.
[6] Ibid.
[7] Crawford, Kenneth G. The Pressure Boys. New York, Julian Messner, 1939. p. ix.

> . . . the law which was passed in [1946] was hardly the product of careful congressional investigation. Rather, it was a hastily considered law, only slightly debated, not amended at all in the course of its passage through House and Senate, and I think it is not doing an injustice to the measure to say that it slipped quietly through Congress on the coattails of the more popular Reorganization Act.[8]

A. BRIEF ANALYSIS OF THE LOBBY ACT

The act defined a lobbyist as:

> . . . any person . . . who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of the following purposes:
>
> (a) The passage or defeat of any legislation by the Congress of the United States.
>
> (b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

If a person believed he met this definition, he was required—before making any legislative contacts—to register with both the Clerk of the House of Representatives and the Secretary of the Senate. His registration was required to contain certain information:

—his name and business address and the name and address of his employer;
—the duration of his employment;
—his salary and the person responsible for paying the salary;
—how much the lobbyist is paid for expenses and what these expenses include.

After the lobbyist registered, he was required to file subsequent quarterly reports with the Clerk and the Secretary as long as his lobbying activities continued. The additional information required to be contained in these reports included:

—a "detailed report under oath" of funds received or spent during the preceding quarter;
—to whom and for what purpose these funds were paid;
—the names of newspapers and magazines in which the lobbyist "caused to be published" articles or editorials;
—the proposed legislation the lobbyist was employed to support or oppose.

Reports of contributions and expenditures were dealt with in greater detail in a separate section. Quarterly reports of this information, required to be filed with the Clerk only, had to contain the following:

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[8] 1950 Buchanan Hearings, p. 54.

—an identification of each person making a contribution to the lobbyist or his organization of $500 or more;
—The total sum of all contributions made for the year to date;
—an identification of each person who had been the subject of an expenditure of ten dollars or more, and the amount, date and purpose of the expenditure;
—the total sum of expenditures made by or on behalf of any person during the calendar year.

Lobbyists were required to keep detailed accounts of all contributions, including the names and addresses of each person who made a contribution of $500 or more, or who was the subject of an expenditure of ten dollars or more.

Criminal penalties could be imposed for violations of the act. Misdemeanors could be punished by a fine of up to $5,000 or imprisonment for up to a year. If a lobbyist was convicted of violating the statute, he was prohibited for a period of three years from engaging in lobbying activities. A violation of this provision could result in a felony conviction and subsequent fines of up to $10,000 and imprisonment for up to five years.

B. REACTION TO THE ACT: THE BUCHANAN HEARINGS

As the staff director of the Joint Committee later conceded, the Lobbying Act was less than precisely-drafted legislation. Questions arose immediately about who was covered under its definitional standards, the extent of its reporting requirements, and liability under its criminal enforcement provisions. Rather than settling the issue of lobbyist influence, the act served only to make things more confusing. In 1948, after a year's experience, a Senate measure to make minor changes in the act was reported from committee but not approved on the Senate floor. President Truman's 1984 presidential campaign included attacks on the "special interest" and charges that lobbyists were not registering as required. Calls were heard for an intensive joint congressional investigation of lobbying.[9] Disagreements between the House and Senate on plans for a joint investigation resulted finally in the creation in the House of a Select Committee on Lobbying Activities chaired by Rep. Frank Buchanan of Pennsylvania.

The hearings were the first large-scale evaluation of the act since its passage and documented many of its perceived shortcomings. Witnesses testified that the act was, "in many respects, an unsatisfactory law," that its effectiveness was limited, and that "its provisions are in urgent need of strengthening and revision, if the objectives of the framers [of the act] are to be fully realized." [10]

More specifically, witnesses emphasized the criticisms of legal scholars and political analysts that the Lobby act trod on citizens' rights of petition, speech and assembly; that the act was limited by its use of the term "principal purpose" in its definition of a lobbyist; that it failed to cover lobbying activities before executive agen-

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[9] See 1977 Commission Study, p. 174–175.

[10] 1950 Buchanan Hearings, p. 57, 107.

cies or the White House; that it failed to require important **information** in its registration statements, such as "how the membership decides its lobbying policy;" and that the act—especially the financial statements—was inadequately publicized.[11]

The select committee made numerous recommendations for strengthing the act, although the select committee's mandate did not authorize it to report legislation. But, more importantly, its activities directly resulted in the first of two Supreme Court decisions that limited the scope of the act's coverage and so made its reported information even less useful.

In *U.S.* v. *Rumley,*[12] the Court held that the Buchanan Committee had no authority to compel the respondent Rumley, an official of an organization from which the select committee had requested certain documents, to furnish the request information. While most of the Court's decision dealt with the scope of Congress' powers of investigation, the Court clarified the meaning of the term "lobbying activities," not from the language of the Lobby Act, but in the resolution creating the Buchanan Committee and empowering it to make its inquiry. The Court determined that the phrase referred to "lobbying in its commonly accepted sense," that is, appeals made directly to Members of Congress, rather than the broader interpretation urged by Chairman Buchanan that it include attempts "to saturate the thinking of the community." Writing for the Court, Justice Farnkfurter declared:

> Certainly it does no violence to the phrase "lobbying activities" to give it a more restricted scope. To give such meaning is not barred by intellectual honesty. So to interpret is in the candid service of avoiding a serious constitutional doubt.[13]

The Court's decision in *Rumley* was a blow to those who hoped the thorough investigation of the Buchanan Committee would lead to a strengthened Lobby Act. But for these supporters, worse was in store in the near future.

III. THE SUPREME COURT CONSTRUES THE ACT: U.S. V. HARRISS

Two years later, the Court ruled again on lobbying, this time on the Lobby Act directly. The Court's ruling, in *U.S.* v. *Harriss* [14] followed the reasoning in *Rumley* and interpreted the Act narrowly. Thus today, the Court's interpretation applies the law only to individuals and groups who collect or receive money for the principal purpose of influencing legislation through direct contacts with Members of Congress. Groups or individuals who spend their own funds are exempt from coverage. The "principal purpose" clause may exempt organizations who claim that the majority of their activities consists of those other than lobbying, for example, education of group members or policy analysis. Since only direct contacts with Members—lobbying in its commonly accepted sense, in the

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[11] Ibid., p. 114.
[12] 345 U.S. 41 (1952).
[13] 345 U.S. 47 (1952).
[14] 347 U.S. 612 (1954).

Court's determination—are covered, the Lobby Act exempts contacts between lobbyists and congressional staff, and grass-roots lobbying. Efforts to influence decisions in the Executive Branch are not covered.

The Court's narrow interpretation provides no leeway for the Clerk of the House or the Secretary of the Senate to make inquiries concerning completeness or accuracy of registrations or reports; no such explicit authority is found in the statute. Likewise, the Justice Department, charged with enforcing the act, has no mandate for vigorously pursuing alleged offenders.

Although clearly stating that the Lobby Act could be held constitutional only through the Court's interpretation, the Court also demonstrated that it was not unsympathetic towards the need for lobby disclosure. To forbid Congress to require lobby disclosure would be to forbid it the power of self-protection.

The Court asserted that:

> Present-day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the common weal. This is the evil which the Lobbying Act was designed to prevent.
>
> Toward that end, Congress has not sought to prohibit these pressures. It has merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose. It wants only to know who is being hired, who is putting up the money, and how much.[15]

The Court's interpretation agreed with those analyses by critics of the statute who concluded that the act was vague and overly broad in the net it cast over the lobbying community. Given the legislative history of the act, particularly the initial lack of attention it received in committee and on the floors of the House and Senate, it may be argued that the Court could hardly have ruled otherwise. But the Court was also clear in its belief that Congress needed to be aware of the activities of pressure groups. Implicit in *Harriss* was a message to Congress to try again.

IV. CONGRESS SEEKS TO REVISE THE ACT

In the thirty years since the *Harriss* decision, Congress has taken to heart the Court's admonition to draft a lobby disclosure statute that would pass a test of constitutionality. But these efforts have been spurred in the main not by the presence of a poorly drafted statute in the books, but as the result of continued charges and investigations of lobbyist improprieties.

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[15] 347 U.S. 625.

In the course of debate on a natural gas bill in 1956, Senator Francis Case of South Dakota charged that he had been offered a $2,500 campaign contribution to influence his vote. Shortly following Senator Case's revelation, a Select Committee was authorized to investigate the charges. The Select Committee's report emphasized the need for "substantial clarification" of the language of the Lobby Act, because it was "too vague and loosely defined. Had the act been clear, the course of events . . . might never have happened." [16] In addition to the call for lobby law revision, the Senate's investigation resulted in the only convictions ever obtained under the act. Two lobbyists were fined $2,500 each and given one-year suspended sentences for failing to register, and the lobbyists' employer, the Superior Oil Co., was fined $10,000.

Pressure to revise the Lobby Act increased when another Special Committee was formed, this one chaired by Senator John McClellan of Arkansas, to investigate alleged improprieties in connection with lobbying on the Natural Gas Act, the Federal Highway Act of 1956, and sugar legislation. The Select Committee's report included a draft lobby disclosure bill that substituted a specific "threshold"—in this case, contributions or expenditures of $300 or more in a calendar quarter to influence legislation—for the emasculated "principal purpose" clause. A threshold of $50,000 in a year for expenditures relating to grass-roots lobbying was included in the bill, and the Comptroller General was given administrative responsibilities. The measure provided for notices of termination and civil as well as criminal penalties. Lobbying of executive agencies was covered if the lobbying was intended to influence legislation.[17]

This bill and similar measures over the next four years received no action, although as the result of intense lobbying on sugar quota legislation in 1962, Congress began an inquiry which eventually resulted in major amendments to the Foreign Agents Registration Act. In 1965 spurred by a congressional investigation into accusations of illegalities involving former Senate aid Bobby Baker, the Senate Committee on Rules and Administration issued a report recommending that administration of the Lobby Act be assigned the Comptroller General. Like others before it, this recommendation received no action.

In 1967, the Senate approved a lobby disclosure measure as part of new legislative reorganization legislation. The measure would have required registration and reporting by persons whose "substantial purpose" was lobbying, would have transferred administration to the Comptroller General, and would have provided for disclosure of contingent fee arrangements. President Johnson voiced his support for the measure stating, "I strongly endorse the Senate's action in strengthening Federal regulation of lobbying as an important step toward better Government, and I urge the House to take similar action." [18] But the House took no action. Lobby disclosure was a major topic of concern in the 1968 report of the Senate Select Committee on Standards and Conduct's inquiry into guidelines for ethical conduct in the Senate.

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[16] See 1977 Commission Study, p. 176.

[17] U.S. Congress. Senate. Special Committee to Investigate Political Activities, Lobbying and Campaign Contributions. Final Report. Senate Report No. 395, 85th Congress, 1st session, 1957. U.S. Govt. Print. Off., 1957. p. 97-105.

[18] 1977 Commission Study, p. 177.

In 1970, the House, driven in large part by the Bobby Baker investigations, established the Committee on Standards of Official Conduct as a permanent standing committee with express legislative jurisdiction for lobbying. The Committee promptly held hearings and reported a complex disclosure bill titled the Legislative Activities Disclosure Act, significant elements of which were drawn upon for subsequent Senate and House legislation.

Although the House Standards Committee's bill was reintroduced in subsequent Congresses in the early 1970's, there was little enthusiasm for the issue until 1975 when a confluence of four forces brought the legislation as close to enactment as it had come since 1946:

1. The rise of the public interest movement, particularly the growth and successes of groups who concerned themselves with "good government" issues, such as Common Cause;
2. The investigations into the scandals associated with Watergate. Prosecutors considered charges of abuse, impropriety and alleged criminality in the conduct of lobbyists relating to White House involvement with the International Telephone and Telegraph Co. (ITT) and, in another case, with a group of milk processor cooperatives;
3. Congress' reassertion, in the 1970's, of authority in numerous policy areas, particularly in oversight of government operations. A major issue in many of the earlier disclosure debates was the question of coverage of lobbying of and by high-level executive branch officials; and
4. Longstanding congressional dissatisfaction with the current disclosure statute. A 1975 General Accounting Office (GAO) investigation of the operation of the act, requested by Senate Government Operations Committee Chairman Abraham Ribicoff, found the measure generally deficient, particularly in the areas of administration and enforcement.[19]

When a lobby disclosure bill reached the floor of the Senate in June 1976, little opposition was voiced (although serious reservations concerning limitations on First Amendment rights had been heard during hearings from interest group representatives). The bill, S. 2477, passed with only nine dissenting votes.

S. 2477 contained not one threshold by which to define lobbying, but three. An organization would fall under coverage if: (1) it paid a "legislative agent" $250 or more to lobby in a quarterly period; (2) if its own staff made twelve or more "oral lobbying communications" in a quarter; or (3) if the group spent $5,000 or more on grassroots solicitations in a quarter. Critics charged that the $250 and $5,000 'thresholds" were not only too low—thus "capturing" smaller groups and seriously limiting their right to petition—but that expensive and burdensome bookkeeping systems would need to be developed to determine when a group or an individual crossed the "threshold." Critics found the idea of an "oral lobbying communications" test equally onerous and difficult to monitor and enforce. The bill's registration and reporting requirements were comprehensive and detailed and its enforcement provisions were stringent.

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[19] See U.S. Congress. Senate. Committee on Government Operations. Hearings on Lobby Reform Legislation. 94th Congress, 2d session. April 22, 1975. Washington, U.S. Govt. Print. Off., 1976. p. 185–201. (Hereafter, cited as 1975 GAO Report)

Despite quick Senate approval, enactment was held up in the House where legislation was referred jointly to the Judiciary Committee and the Committee on Standards of Official Conduct. By the time both committees finished work on their bills and a measure had been approved on the House floor, it was literally the midnight hour of the 94th Congress. On the last day of the Congress, the Senate was faced with accepting the House version in order to get agreement. It would not accept the House bill—a very difficult measure in its scope—and the debate began anew in 1977.

However, the passage of Senate and House bills had propelled the interest group community into organized opposition. Congressional consideration—especially in the Senate—was more cautious and prolonged. As well, the theme among advocates of lobby disclosure shifted from disclosure as a way to prevent the recurrence of Watergate-type lobbying abuses to lobby disclosure as a "good government" measure: the right of the public to be informed of heretofore secret activities which have an impact on the formation of public policy.

The Senate's response was an attempt to answer criticisms of S. 2477 by drafting a measure that established one set of criteria for large groups, and a second for smaller, less well-financed lobbying organizations. This "two-tier" approach, however, won few supporters. Furthermore, the new bill contained another provision that became a lightning rod for criticism. A covered group was required to include in its registration statement the name of each organization which, in the preceding year, had made a contribution to the group of $3,000 or more. Again, opponents charged violence to the First Amendment.[20]

In the House, a bill moved smoothly through the Judiciary Committee (the Standards Committee having lost its legislative jurisdiction over lobbying at the start of the New Congress) and on to approval by the full House.

It is noteworthy, with respect to all the lobby disclosure bills of this period, that none of the threshold tests—and in the course of the debate there were discussed days' tests, oral communications' tests, written communications' tests, and expenditures' tests in different combinations—necessarily reflected a true picture of lobbying. They were all "guesstimates"—imprecise efforts to set a *de minimis* threshold—by Members, staff and outside interests.

The lack of accepted criteria upon which to base a definition of "lobbyist" or "lobbying group" meant that advocates of lobby disclosure could not specify in a universally satisfactory way the point at which a group was engaged in lobbying efforts to the extent that it should register with a government agency. Critics asserted that the inability to determine this point cast doubt on the legislation's constitutionality. One critic remarked, "Congress is required to identify the point at which . . . inferences of influence or deception can be drawn. So far they have not done so." [21] The lack of criteria upon which to base a policy determination—a problem that has yet to be confronted by policy makers—raises questions about not only the threshold tests, but virtually all proposed legislative remedies: contributors' disclosure, reports of entertainment expenses, and grass-roots solicitations.

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[20] See, for example, Eastman, Hope. Lobbying: A Constitutionally Protected Right. Washington, American Enterprise Institute, 1977. p. 28–29.

While the House leadership and lobbying by the Carter Administration—which had made lobby disclosure one of its priorities—prevailed on the House floor, Senate legislation was held up in the Governmental Affairs Committee. There the dispute centered on coverage of grass-roots lobbying and the issue of contributors' disclosure. Although numerous efforts were made to report a bill, the committee members were unable to resolve their differences.

By 1979, there was little enthusiasm in either the House or Senate for lobby disclosure. The House again reported a bill from the Judiciary Committee, but the leadership was determined to hold up floor consideration until the Senate showed it could get a bill through committee. Senate hearings were held on a comparatively narrow bill that would have required only a minimum amount of information and contained none of the provisions that had hindered approval in the previous Congress. But when it came time to mark-up the measure, agreements could not be obtained. The post-Watergate era was ending and public attention no longer focused on allegations of lobbyists' improprieties. In the House, a third vote in as many Congresses on a bill with no chance for enactment was unpopular among even those House Members strongly supporting the legislation.

In the years between 1981 and 1985, lobby disclosure was largely forgotten. After six years of effort, there was little enthusiasm for a bill, broad or narrow. President Carter, a supporter of lobby disclosure, was out of office, replaced by a Republican President who had not indicated support for lobby disclosure. Even Common Cause, one of the first and most active advocates of the legislation, focused instead on controlling political action committees (PACs) and election spending, among other issues.

V. THE ACT IN PRACTICE

A. CLERK OF THE HOUSE AND SECRETARY OF THE SENATE

Both the language of the Lobby Act and the Supreme Court's interpretation of the "principal purpose" clause limit the scope of the responsibilities assigned to the offices charged with administering and enforcing the Act. Neither the Clerk of the House nor the Secretary of the Senate—the two offices charged with administering the registrations and reports filed by lobbyists—have authority to investigate an individual lobbyist or a lobbying organization to ascertain if they have complied with the act's registration, recordkeeping or reporting requirements, not can these offices investigate potential violations.

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[21] Ibid., p. 30.

A 1975 General Accounting Office (GAO) report on difficulties in administering and enforcing the Lobby Act recalled testimony by the Clerk of the House in which the Clerk stated that "because he had no power to enforce the act his office was merely a depository for information for anyone who wanted to file." [22] Similiarly, the GAO inquiry found that the Superintendent of the Office of Public Records, the sub-unit of the office of the Secretary of the Senate that in practice administers the act in the Senate, reported that his office was responsible for "(1) receiving lobbyists' registrations and quarterly financial reports and (2) compiling a list of those reports, in coordination with the Clerk of the House, for printing in the Congressional Record." [23]

Likewise, no effort was made to assure that report forms were received in a timely fashion, although the act requires that these forms be filed by a certain date.

The only action taken by the Clerk or the Secretary was the return of registration or quarterly financial reports that had not been properly notarized or signed.

In its conclusions, the 1975 GAO report advised:

> The Clerk of the House and the Secretary of the Senate do not have investigative authority, the right to inspect records, enforcement power and, therefore, do not monitor the registration and reporting requirements.
>
> If the [Government Operations] Committee believes that there is a need for stronger administration of the act, the Committee may wish to pursue with the Clerk of the House and the Secretary of the Senate the lack of (1) investigative authority, (2) the right to inspect records, and (3) enforcement power to determine whether the act should be strengthened. The Committee may also want to discuss with the Office of the Secretary and the Clerk of the House the follow-up efforts necessary to encourage complete and timely reporting.[24]

In the years since 1975, while the act has remained unchanged, both the Clerk and the Secretary have taken steps, within their authority as they perceive it, to more effectively administer the act, particularly with respect to the GAO report's concern with the encouragement of complete and timely reporting. In 1979 House hearings on lobby disclosure, the Clerk reported that his office had taken three major actions:

1. The earlier practice of notifying by telephone filers of inadequate reporting information had been replaced by a system of formal written notification.

2. The development of a computer program to notify registrants by postcards of their upcoming filing requirement, and to notify individuals of their failure to subsequently file. The postcard system provides some indication that a lobbyist is no longer active, under the act's provisions, thus addressing a criticism that because of statutory deficiencies, the lobbyist lists

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[22] 1975 GAO Report, p. 196.
[23] Ibid.
[24] 1975 GAO Report, p. 201.

were never purged and it was therefore impossible to determine when a lobbyist was no longer active.

3. The development of a second computer program to perform certain functions with respect to registration and report data, including: cross-referencing the report data with legislative interests, and/or type of lobbying concern, e.g., law firm, corporation, consulting firm; automatically receipting reports filed and notifiying registrants who failed to file; cross-referencing registrants with employers and/or clients; and producing, on demand, mailing labels and other address information.[25]

At present in the Senate, according to a statement filed by the Secretary of the Senate in the course of the Governmental Affairs Committee's 1983 hearings on lobbying, processing of reports consists of logging their receipt and a review for completeness. If the report is not correct or complete, the filer is sent a notice asking for additional or clarifying information. The Secretary stated further that plans were being implemented, utilizing the House computer program, to establish an automated system having capabilities similiar to the current House system.[26]

Though hindered by clear statutory authority, both the Clerk and the Secretary have made progress in more effectively and efficiently administering the act. The changes they have made have been small relative to the deficiencies of the act but they are praiseworthy nonetheless. The new House procedures, utilizing computer technology, may account in part for the dramatic rise in registrations in the past few years by systematically encouraging timeliness and completeness.

B. THE DEPARTMENT OF JUSTICE

The Lobby Act contains criminal sanctions that at their extreme may result in fines of up to $5,000 and imprisonment for up to twelve months. The Department of Justice is responsible for enforcement of these sanctions. Although the Department may initiate investigations on its own authority, since the 1954 *Harriss* decision the Department has "shifted the focus of its principal efforts from prosecution to promoting voluntary compliance by bringing the act to the attention of those to whom it is potentially applicable." [27]

When the Department does take an active investigative role, it is on the basis of matters referred by individuals, most often by Members of Congress and journalists. The 1975 GAO study related that of five matters referred to the Department between 1972 and 1974, two were initiated by journalists and three by Members of Congress.[28] According to the 1975 GAO inquiry, the Department has no specific written criteria on whether a complaint should be investigated and decisions to investigate are based on the "merit of the complaint and the experience of the attorney handling the matter."[29]

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[25] U.S. Congress. House. Subcommittee on Administrative Law and Governmental Relations. Committee on the Judiciary. Hearings on Public Disclosure of Lobbying Activity. 96th Congress, 1st session, February 28 and March 7, 14, 21, 22, and 28, 1979. Washington, U.S. Govt. Print. Off., 1979. p. 279.

[26] 1983 Lobby Hearings, p. 237.

[27] Ibid., p. 192.

[28] 1975 GAO Report, p. 200.

Thus, while the Clerk and the Secretary have been able to make some small improvements in the fashion in which the act is administered, the Department of Justice sees itself relegated to an almost totally passive role by the Court's decision in the *Harriss* case. As in past appearances before congressional committees, a Justice Department representative told the 1983 Senate Governmental Affairs Committee inquiry that:

> The Department has not changed its opinion that the 1946 Lobbying Act is ineffective, inadequate and unenforceable. Ineffective because it does not achieve its intended result; inadequate because the disclosures that result are not commensurate with the lobbying actually taking place; and unenforceable because the focus of the *Harriss* Court [sic] on contributions does not comport with the reality of lobbying practices.[30]

VI. CONCLUSION: THE NEED FOR A NEW APPROACH

Two observations may be made from the material presented in this chapter. The first concerns Congress' unwillingness to re-write a badly deficient statute. Like other loophole-ridden laws, the Lobby Act is a signal that Congress is unwilling or unable to exercise authority where it is clearly indicated. In this case, Congress has been unable—despite numerous efforts—to reach agreement on language that would expand the act's coverage. Congress has also been unwilling to consider repealing the act. This gives the appearance that Congress is satisfied to keep a deficient law in the books.

This appearance has, in turn, several consequences. For lobbyists and interest groups, it implies that, despite rhetoric by some Members of Congress that some lobby groups abuse their First Amendment rights—for example, the lobbying tactics in 1983 of the banking industry on behalf of repeal of tax withholding on interest and dividends—groups may believe they can continue to use these tactics with relative impunity. For the public, this supports the contention of groups like Common Cause that Congress is beholden to special interests at the expense of the public interest. Neither of these views can withstand critical analysis, but the appearances are clear. Clearly, the public's perception of Congress is not enhanced by the Lobby Act.

A second observation relates to the confusion that exists over the purpose of lobby disclosure. Is the policy to prevent abuses of the political process like those that triggered past congressional investigations into lobbying? Is the policy to exercise Congress' right of self-protection, which the *Harriss* decision makes clear is a legitimate rationale for disclosure? Or is the policy to make lobbyists more responsible to the public, which many observers, including Common Cause, believe would contribute to an improvement in public confidence in government? Past efforts to re-write the act have failed to adequately explore and delineate each of these rationales. The consequent confusion has contributed to Congress' failure to develop legislative alternatives.

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[29] Ibid.

[30] 1983 Lobby Hearings, p. 190.

From these observations, it seems sensible to suggest that Congress continue—in spite of all difficulties—to seek a workable solution to the problem of lobby disclosure.

CHAPTER FOUR

THE RATIONALES FOR LOBBY DISCLOSURE

At the start of the Governmental Affairs Committee's 1983 oversight hearings on the Lobby Act, Senator Durenberger remarked that lobby disclosure was:

> . . . making lobbyists and lawmakers more accountable for their actions. This concept of accountability is at the heart of other important Federal laws: the Federal Elections Campaign Act, the Freedom of Information Act, the Ethics in Government Act.[1]

With respect to lobby disclosure, however, "accountability" means different things to different people. In his introductory statement, Senator Durenberger touched on two arguments put foward for lobby disclosure: the belief that lobby disclosure is a means to close the gap between groups with great resources and groups with few resources, and that, as the Supreme Court stated in *Harriss,* Congress has the right to know about the pressures to which the legislature is regularly subjected.

In addition to these two arguments, other rationales for lobby disclosure have been offered, including the idea that lobby groups should be accountable to the public, who have a fundamental right to know about private pressures on public issues, and the notion that the electorate needs lobby disclosure in order to hold Members of Congress responsible for their actions.

The following section discusses each of these four rationales. It concludes with a discussion of the First Amendment and the constitutional constraints on this type of disclosure, the principal arguments against lobby disclosure.

I. COUNTERVAILING FORCES, GROUP MOBILIZATION AND THE PUBLIC INTEREST

The argument that lobby disclosure would help close the gap between well-organized and poorly-organized interests played a major part in the recommendations that eventually lead to the enactment of the 1946 Lobby Act. In discussing the motivations of the 1945 Joint Committee in testimony before the Buchanan Committee, George Galloway stated that the Joint Committee was moved in part by its belief that:

> . . . the "pressure boys" speak for only a minority of the total population of the country. All Americans have an in-

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[1] 1983 Lobby Hearings, p. 1.

> terest in congressional legislation that affects them as consumers, but there is no organized consumers' lobby in Washington. The great majority of the American people are not members of special interest groups and hence are much less articulate on particular issues than are the interested minority whose affiliation with some active organization gives them a greater political leverage.[2]

At the same time, Galloway asserted that the Joint Committee's actions also grew from the belief that the totality of all the special interests did not equal the public interest: ". . . the sum of the special interests, especially the organized special interests, is not equal to the total of all interests of the Nation, for there are vital common interests that cannot be organized by pressure groups." [3] Therefore, lobby disclosure was a means to militate against the power of the "special interests," as the Joint Committee saw them, and demonstrate Congress' determination to legislate in the public interest.

In asserting as the theoretical underpinning of lobby disclosure the belief that a system in which groups competed on an unequal footing was basically an undemocratic system, the Joint Committee placed itself squarely at the center of a debate that has received attention from political philosophers for over two hundred years. The central issue was described by Norman Ornstein: "Do groups, in the sum of their actions and interactions, provide some approximation of the 'public interest,' or is the public interest ignored or shortchanged by group behavior in the political process?" [4] Clearly, the Joint Committee, in formulating its lobby disclosure legislation, believed the latter.

In his opening statement, Senator Durenberger expressed some of the same concerns, though he questioned whether lobby disclosure was an appropriate solution:

> Our society is a kaleidoscope of interests, each competing for attention and a place on the national agenda. But it is a fact of political life that those interests compete on an uneoual footing with one another. . . .
>
> Some interests have greater resources, greater sophistication or more money than others. The advantages of these benefits have grown even larger in these days of computers and laser printers, facsimile letterheads, direct mail. . . .[5]

Others, especially those who have opposed lobby disclosure, have argued that the only public interest is the accumulation of group interests after they have been filtered through the legislative process. This belief was expressed during the committee's 1983 hearings by Hope Eastman, testifying on behalf of the American Civil Liberties Union (ACLU). Ms. Eastman told the committee:

> There is no such thing as the public interest versus the special interest. The public interest that ultimately

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[2] 1950 Buchanan Hearings, p. 102.

[3] Ibid., p. 103.

[4] Ornstein, Interest Groups, Lobbying and Policymaking, p. 7-8.

[5] 1983 Lobby Hearing, p. 1.

> emerges is a democratic reflection of the competing special interests which come to the Congress.[6]

Ms. Eastman also addressed the question of lobby disclosure as a tool to encourage groups with few resources to enter the political marketplace: She argued that, rather than requiring disclosure and so "restricting" certain lobbying activities, the government should "explore opening up the process in some way to groups that do not have access to the sophisticated mail machinery that some of the larger groups have." [7]

II. CONGRESS AND THE RIGHT OF SELF-PROTECTION

This argument for lobby disclosure was endorsed by the Supreme Court in the *Harriss* decision. Critics of lobby disclosure, however, have long asserted that because their livelihood depend on it, Members of Congress are well-informed about lobbying activities. At the 1983 Lobby Act oversight hearings, Jeffrey Joseph of the Chamber of Commerce told the committee:

> I don't believe you or any of your colleagues . . . have come here within a political vacuum and you have no feel of what happens within your state or what your constituents have to say. . . . I think there is a self-serving reason for Members of Congress to know what is going on to make sure they have mechanisms in general to permit the transmittal of that information.[8]

Since Members have sufficient *de facto* knowledge of interest group activities, there is no reason to require that this information be made available, and so no compelling reason to legislate on the basis of self-protection.

However, as the 1983 Lobby Act hearings pointed out, new approaches to certain lobbying techniques, especially those techniques involving computer mailings and other sophisticated forms of grass-roots communications, make the analysis of pressure ever more complex. Addressing a question to Robert Smith, an expert in computerized direct mail appeals, Senator Durenberger asked:

> I think I heard in your reponse that there is some burden on me as a legislator to be able to analyze what is landing in my mail room . . . I take it in the future I have got to have some kind of electronic complex setup, staffed and so forth and it seems to me you are suggesting that I need to have some sort of analytical component. . . .
>
> . . . what is the poor Senator to do? Is he supposed to get out ahead of this? What is he supposed to do about the facsimile letterhead problem. . . . What am I supposed to do about that? [9]

Under the circumstances described by Senator Durenberger, it may be argued that in some instances Members of Congress, contrary to Mr. Joseph's assertion, are not able to adequately judge grass-roots pressures. In fact, a concern similiar to Senator Durenberger's was expressed by George Galloway in his testimony in 1950 before the Buchanan Committee:

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[6] 1983 Lobby Hearings, p. 6.

[7] Ibid.

[8] 1983 Lobby Hearings, p. 18.

[9] Ibid., p. 216–217.

> Experience has taught the members [of the select committee that recommended the 1946 Lobby Act], as it has many other Congressmen, that their mail is neither reliable nor representative of general sentiments. . . . The mail Members receive is sometimes a false guide to the State or public opinion on a question. It measures the intensity of feeling on the subject rather than the majority sentiment.[10]

By these standards, then, the Court's rationale for disclosure remains valid today.

III. LOBBY DISCLOSURE AS A "SUNSHINE" ISSUE: THE PUBLIC'S RIGHT TO KNOW

This argument asserts that interest groups should be held socially and politically accountable for their actions and, moreover, citizens have an inherent right to know about groups political activities. This view emphasizes the belief that lobbyists have become quasi-official participants in the governmental process through their efforts at influence. Thus, lobbyists have accrued a degree of authority—and with it responsibility—to make decisions in the public interest. Holders of this view argue that such influence should not be exercised in secret, hidden from the eyes of the public.

This argument was commonly used by groups such as Common Cause and their allies in Congress during the lobby disclosure debates of the 1970s. In the 1983 Lobby Act hearings, Fred Werthheimer, president of Common Cause, reiterated the group's contention for the committee:

> The public has a right to know how their government works, and particularly how government decisions are influenced by the activities or organizations heavily engaged in the legislative process. Disclosure of lobbying expenditures provides the public with a valuable measure of the money and influence being brought to bear on political decisions.[11]

Two other tangential arguments for lobby disclosure are closely tied to this theory. The first posits that lobby disclosure falls into the same general category as "open government" measures like the Freedom of Information Act and the Government in the Sunshine Act. As Senator Chiles remarked in his opening statement at the Lobby Act oversight hearings:

> [Congress' unwillingness to rewrite the Lobby Act] stands in stark contrast to the advances we've made to open up the decision-making processes of the Federal Government. The workings of government are now much more

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[10] 1950 Buchanan Committee, p. 102-103.
[11] 1983 Lobby Hearings, p. 46.

> open to public scrutiny. . . . But the public and the press [are] certainly not getting the full picture if the innumerable pressures and influences brought to bear on the Congress are not open to examination.[12]

The second notion, often expressed in periods following charges of illegalities or improprieties by lobbyists, argues that the benefits of lobbying groups are often overshadowed by what two Senators in 1975 characterized in hearings as a "darker side,"

> . . . a side that is responsible for the sinister connotation that lobbying often has. In large part, the connotation derives from the secrecy of lobbying and the widespread suspicion, even when totally unjustified, that secrecy breeds undue influence and corruption. It is but a short step from there to the cynical and undeserved view that government is the puppet of wealthy citizens and powerful interest groups with special access to Congress and the Executive Branch.[13]

It is this view that most emphasizes disparity in group resources and the perceived utility of disclosure in controlling the "underside" of lobbying.

Critics of this view argue that the idea of the public's right to know is an inferred right, "which, unlike the right to petition the government, has not received specific constitutional protection and sanction."[14] Thus, unless the government can show some compelling reason, like that which resulted in campaign contribution and expenditure limitations, it oversteps its generally recognized authority to limit First Amendment freedoms of petition.

With respect to the image of large sums of money spent in secret, critics say that argument is no longer valid. Hope Eastman asserted that:

> I think it is very important that when the discussion of vast sums of money and great amounts of secrecy are raised, it is important that the Congress keep in mind what kind of conduct is sought to be regulated. It is not bribery, it is not campaign contributions any longer, it is not even expensive lobbyist luncheons. We are really talking about efforts on the part of organized interest groups to communicate their point of view to the voting public where the voting public can in turn communicate their view back to the Members of Congress.[15]

To critics like Eastman, the emphasis of modern lobbying is on grass-roots communications, an area that goes to the heart of First Amendment Freedoms.

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[12] Ibid., p. 3.

[13] U.S. Congress. Senate. Committee on Government Operations. Hearings on Lobby Reform Legislation, April-November, 1975. Washington, U.S. Govt. Print. Off., 1976. p. 18.

[14] 1983 Lobby Hearings, p. 22.

[15] Ibid., p. 6.

IV. CONGRESS IS RESPONSIBLE TO THE ELECTORATE

This theory argues that office-holders, not interest groups, should be held accountable to the electorate; it was a moving force behind campaign finance and personal financial disclosure legislation. This view, while not totally absolving pressure groups of the burden of public responsibility, nevertheless places a significantly heavier burden on the office holder to reject special interest pleadings if they are inconsistent with his view of the public interest.

Under this model, office-holders are held accountable in the elections process. The press, or an election opponent, is given the means to access the office-holder's prior voting record in light of efforts to influence his votes. Scrutiny can be brought to bear in those cases where a Member's behavior is seen as least consistent with the general interest, or the special interests of constituents. Rather than keeping the interest group "honest," this model emphasizes keeping the office holders "honest."

V. CONCLUSIONS: THE LIMITATIONS OF DISCLOSURE

From the arguments presented here, the case can be made that lobby disclosure could make a substantial contribution to good government: it could narrow the gap between wealthy, well-organized interests and poor, unorganized interests; it could enhance legislative decision-making by providing Congressmen with information about pressure group activity; it could enhance public confidence in Congress by disclosing lobbyist activity and revealing something about the nature and extent of lobbyist-congressman relationships.

But balanced against these desirable goals is a highly undesirable possibility that a statute promoting disclosure might also inhibit citizens from exercising their rights of speech and petition. While the Supreme Court made clear in *Harriss* that a Congress, as a means of self-protection, was entitled to know about pressure group activities, other decisions of the Court have just as vigorously defended unfettered First Amendment privileges. In a broad sense, the Court has declared that "debate on public issues should be uninhibited, robust and wide-open." [16] More directly, the Court, in the landmark 1976 decision in *Buckley v. Valeo,* set forth a test against which efforts to limit speech and petition must be judged: [17]

> We long have recognized that significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest. Since Alabama [NAACP v. Alabama, 357 U.S. 449 (1958)] we have required that the subordinating interest of the State must survive exacting scrutiny. We also have insisted that there be a "relevant correlation" or "substantial relation" between the governmental interest and the information required to be disclosed.[17]

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[16] *New York Times* v. *Sullivan,* 376 U.S. 259 (1969).

[17] *Buckley* v. *Valeo,* 424 U.S. 1 (1976).

In another recent decision the Court struck down a criminal statute prohibiting business corporations from making contributions or expenditures affecting the corporation's business. The Court included in its decision the finding that the "inherent worth" of political speech "does not depend upon the identity of its source. . . ."[18]

In addition to the constitutional conflict reflected in *Harriss*, *Buckley* and *Bellotti*, the realization of lobby disclosure is stymied by two other factors. First is the inability of disclosure advocates to demonstrate concretely that disclosure will, in fact, result in the benefits they claim. There are no instances, on the State or Federal level, where analysts have been able to prove that disclosure has deterred or halted abusive or improper lobbying practices. The second factor is the question of timeliness. Common sense indicates that for disclosure to be effective, reports of lobbying activities must be available contemporaneous with the activities themselves. The Lobby Act and proposals for revising that statute provide for reports that would not be available until after the lobbying activities that are the subject of the reports had taken place. Thus, while the reports may have some historical value, their lack of timeliness negates much of the purpose for which they were intended. Until these issues are resolved, the limitations of disclosure may render it an unsuitable remedy to the perceived problems of pressure group politics.

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[18] *First National Bank of Boston* v. *Bellotti*, 435 U.S. 777 (1978).

CHAPTER FIVE

LOBBYING IN THE EIGHTIES AND BEYOND

One question raised by the committee's Lobby Act inquiry dealt with analysts' visions of the future for pressure group activities and the relationship of these activities to lobby disclosure. What future aspects of pressure group activity might support a case for disclosure, or, on the other hand, might render disclosure unsuitable or unnecessary? This chapter briefly describes different visions of certain aspects of pressure group politics as seen by committee witnesses and other analysts.

I. CHANGES IN THE POLITICAL PARTIES

One discussion in this report suggested that interest groups fill a vacuum created by the political parties who, increasingly, find themselves unable to respond to certain social and political needs. An analyst of political parties, Frank J. Sorauf, sees this phenomenon illustrated by the growth of single-issue politics. For Sorauf, single-issue politics is the antithesis of party politics; where parties must build consensus and fashion majorities, single-issue politics focuses its efforts so intensely, that compromise is often ruled out. Sorauf assets that:

> Loyalty to a single-issue position—and the rewarding or punishing of a candidate or officeholder on its basis alone—is quite different from the pragmatic acceptance of a number of candidates and issue positions that loyalty to the political party assumes.[1]

But more importantly, Sorauf believes there is a greater danger because the "sheer quantum and intensity of political feeling" cannot be absorbed or integrated into the parties.[2]

For Sorauf, the political future will be marked by volatility, fluidity and instability, for he believes that not only will established interest groups assume a greater importance in electoral politics, but so will a variety of other political organizations: candidate organizations, ideological movements and ad hoc issue organizations.[3]

Two other analysts of political parties, Ruth K. Scott and Ronald J. Hrebenar, note that as the parties have declined, interest groups have assumed a greater role as a channel of communication between citizens and government: "Interest groups have developed sophisticated lobbying techniques to facilitate the exchange of information between citizens and their government without utilizing the once significant party channels of communication." [4] Scott and Hrebenar also support the idea that the decline of party influence in Congress may be linked to the growth of interest groups. They believe that while the parties will probably continue to be an important part of political life, they are not likely to regain the importance they once held in the areas of information exchange and influence in Congress.[5]

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[1] Sorauf, Frank J. Party Politics in America. 4th ed., Boston, Little, Brown, 1980. p. 403.
[2] Ibid.
[3] Ibid.

Finally, the growth of PACs and changes in the election process appear to provide abundant evidence to conclude, as do Loomis and Cigler, that "The weakness of political parties has helped to create a vacuum in electoral politics since 1960, and in recent years interest groups have aggressively moved to fill it." [6] Thus, the continued growth of interest groups may depend, in part, on the unwillingness or the inability of the parties to regain control of the electoral process. The influence of pressure groups could drop if, for example, PAC contributions were first funneled through the parties and then distributed to candidates. Few observers, however, see this as likely, hence a probable continuation in the growth of PACs and interest group involvement in elections.

II. INFLUENCE OF THE MEDIA AS A REQUIREMENT FOR PRESSURE GROUP SUCCESS

In "The Prospects for Pluralism in the American System: Trends in Unofficial Public Sector Intermediation," Nelson Polsby sees a future where interest group success may depend increasingly on a group's ability to attract and hold media attention.[7] He points to the successes of groups such as the Ralph Nadar organizations, with few or no members but good public relations, and the difficulties faced by large organizations such as labor unions with large memberships but "no particular skill at feeding the mass media the sorts of things they like to process." [8] Polsby believes that particularly vulnerable to an interest group with sophisticated media skills is the politician whose connection with his electorate is based more on publicity than on shared loyalties to interest groups or political party. Polsby warns, however, that the advantage of media-sophisticated groups may be temporary. As media outlets increase, particularly as the numbers of television channels increase, greater programming variety and less uniformity in political views could dilute media appeals.

III. CONTINUED GROWTH IN THE FORMATION OF "LIFE-STYLE" GROUPS

In the same paper, Polsby suggests that future interest groups will likely form around "intricate patterns of affiliation" that focus on aspects of an individual's "life-style" other than the narrowly economic. Polsby points to indicators such as increasing prosperity, geographic mobility, high levels of education, changes in the labor force, technological improvements in food storage and transportation, and behavioral changes in family living as the forces that have released the individual from limited group affiliations that were largely inherited. These forces show no sign of slacking. The result, says Polsby, will be the formation of more groups representing increasingly diverse social interests. In other words, Polsby says, "I do not see any signs of abatement of current trends: the proliferation of groups, the invention of new demands, and the consequent bureaucratization of intermediation as service agencies attempt to protect themselves against excessive claims." [9]

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[4] Scott, Ruth., and Ronald J. Hrebenar. Parties in Crisis. New York, John Wiley and Sons, 1984. p. 355.

[5] Ibid.

[6] Loomis, Burdette A. and Allan J. Cigler. Introduction: The Changing Nature of Interest Group Politics. In Loomis and Cigler, Interest Group Politics, p. 20.

[7] Polsby, The Prospects for Pluralism in the American Federal System, p. 29.

[8] Ibid.

IV. A WORST CASE SCENARIO: MANCUR OLSON AND THE RISE AND DECLINE OF NATIONS

A broader—and gloomier—perspective on the future is provided in a recent study by the economist Mancur Olson. The argument of *The Rise and Decline of Nations* is that political stable societies lead inevitably to the growth of interest groups. As the groups flourish, economic growth becomes inhibited. Increasingly, the groups seek to control wages, fix prices, protect themselves from new competition and win subsidies. Their political power increases and as they win group objectives, the economy's vitality and efficiency become enfeebled and political life becomes more and more divisive.[10] Olson's main point—that extensiveness of group behavior must lead to declining economic performance—is controversial for several reasons. First, because he asserts it as a general theory supported by historical analyses across regions and cultures. Second, because the theory contradicts the fundamental belief of many that a democratic society is a prosperous society. Olson's view is that the freedoms of petition and organization that allow people to influence governmental decisions must inevitably lead not to prosperity but to economic grid-lock and decline. If Olson is right, then the current surge in pressure group activity may be seen as a stage in the inexorable rise of group influence to the general detriment of society.

V. LOBBYING IN THE EXECUTIVE AGENCIES

Writing about pressure groups in the executive agencies, Joseph A. Pika believes that "barring wholesale retreat" of the Federal Government from American life, pressure group activity will "not . . . diminish significantly."[11] Two processes may occur, however. Government agencies may adopt mechanisms to better cope with group demands; and certain groups may find themselves increasingly "socialized" to the Washington community. That is, groups whose origins were based on protest will adopt "establishment" methods and techniques, achieve a certain amount of success and so "ultimately lose their original sense of reforming purpose."[12]

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[9] Ibid.

[10] Olson, The Rise and Decline of Nations, p. 48

[11] Pika, Joseph A. Interest Groups and the Executive. In Cigler and Loomis, Interest Group Politics, p. 320.

Pika also believes that group demands to participate in agency decision-making will decline, an observation that runs counter to the vision of Nelson Polsby, who suggests that increasing demands on government, both legislative and executive in nature, must logically flow from increases in the numbers of groups. Pika, on the other hand, believes that the social movements that he credits with major responsibility for the current levels of pressure group activity will subside and bureaucratic entrenchment in the name of efficiency, economy and good management will discourage pressures for citizen involvement.[13]

VI. LOBBYING TECHNIQUES OF THE FUTURE

Most analysts see a future of continued pressure group growth. What, then, might be some of the techniques groups will utilize? Current debate on this question seems divided into two camps, those who believe that the current methods involving sophisticated mail solicitations are the wave of the future and those who say that such techniques can never replace direct contact between lobbyists and government officials.

The committee's 1983 lobby inquiry heard testimony indicating that rather than one or the other taking precedence, both broad classes of techniques will likely be important. Robert Smith of Targeted Communications drew a picture of a future where political involvement is aided and intensified by technology:

> As we gaze into the future, we see an increasingly aware electorate who will use the new technologies for becoming even more knowledgeable—videotext machines, expanded news broadcasts on cable and commercial televison—and they will use a whole host of new interactive response vehicles such as two-way cable, teleconferencing, and the electronic mailbox.[14]

Jeffrey Joseph, of the Chamber of Commerce, told the committee that ". . . while the old-fashioned meeting, with live speakers, will probably never go out of style, many efforts have been made to short-circuit the time involved in using small audiences as a mechanism to transmit information."[15] Joseph suggested that the future could bring the advent of what he called "teledemocracy," a system of politics and government combined with sophisticated communications technology that "could lead to the purest form of democracy ever."[16] One component of "teledemocracy" could be interactive television, where Members of Congress would be in constant contact with constituents and could, for example, query public opinion on an issue just moments before a floor vote. Lobbying under such a system would, according to Joseph, focus exclusively at the grass roots, "with a special interest group's primary focus on making one's members or supporters the most informed and the most vocal on any particular issue."[17]

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[12] Ibid.

[13] Ibid., p. 320-321.

[14] 1983 Lobby Hearings, p. 215.

[15] Ibid., p. 31.

[16] Ibid.

The development of these new lobbying techniques will pose new problems about how to regulate lobbying, Joseph said. Is lobbying through interactive television direct or indirect lobbying? Is it, perhaps, only a technologically advanced form of the right to petition? Joseph warned that "Concerns about the federal government assuming a big brother role come quickly to mind."[18]

The importance of traditional lobbying techniques was upheld by Charls Walker and Maurice Rosenblatt. Walker told the committee that direct presentations before Members of Congress that stress jobs, payrolls and economic growth in the Member's district will continue to be a lobbyist's best technique. Walker's "secret of lobbying as far as our firm is concerned" is that no matter how antibusiness a Member of Congress is, he will listen to a reputable professional lobbyist when the issue is local economic prosperity.[19]

Rosenblatt questioned the effectiveness of modern grass-roots campaigns, arguing that Members are likely to heavily discount postcard and similar mass mailings. He told the committee:

> I question whether the electronic communication is going to make that profound difference against the individual hand operation. I still think that the lobby is essentially one man, one buttonhole. It is that personal eye-to-eye contact that has the maximum effect.[20]

Rosenblatt further suggested that lobbyists have become "fascinated by the technology" at the expense of "some rather traditional approaches."[21]

VII. CONCLUSIONS: THE LIMITATIONS OF LEGISLATION

In the visions of the future recounted here, is there a place for lobby disclosure? One response might be an immediate yes, since analysts generally agree that pressure group activity will continue to advance, issues will become increasingly complex and sophisticated, and decision-making increasingly decentralized. In such a future, Congress might easily rationalize that more than ever it needs a measure of protection from group pressures.

But two factors militate against this. The first is the belief expressed by Jeffrey Joseph that the complexities of the future will require that as technology makes direct access to policy-makers easier for broad segments of the population, by the same token this access should be unencumbered by the requirements of lobby disclosure. In order words, the distinction between professional lobbyist and citizen-petitioner may become increasingly blurred. In such a case, determining a suitable test for registration and reporting may similiarly become increasingly complex.

The second factor concerns the history of this issue. The failure of disclosure advocates over almost forty years suggests that no matter what may happen in the future, barring a lobbying scandal of a scale as least as great as Watergate, Congress is unlikely to be convinced that broadening the Lobby Act is worth the price of perceived limitations on speech and petition.

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[17] Ibid.

[18] Ibid.

[19] Ibid., p. 213.

[20] Ibid., p. 220.

[21] Ibid., p. 222.

But even in a statute as badly deficient as the 1946 Federal Regulation of Lobbying Act there are strengthening options available that would not threaten First Amendment freedoms. These options are the subject of the final chapter of this report.

CHAPTER SIX

OPTIONS FOR LOBBY DISCLOSURE

In addition to the explanations offered in the previous chapters, past efforts to revise the Lobby Act may have failed for two additional reasons. The first reason has to do with the philosophical and theoretical approach of the proponents of revision. Most legislation drafted since 1954 has reflected two incongruent themes. The first is the attempt to bring the act into conformance with the Supreme Court's decision in the Harriss case by more precisely defining terms like "lobbying," "lobbyist," etc. At the same time, these bills have also sought to broaden coverage of the act to bring modern lobbying practices within the net of disclosure. The result has been legislation that could be viewed at cross purposes to itself by attempting simultaneously to specify and to expand coverage.

A second reason for failure can be seen in the political attitudes and strategies adopted by the proponents for revision. Despite decades of failure, reformers continued to try to resolve the deficiencies of the act by a single grand gesture rather than considering a strategy of policy incrementalism and political accommodation. Little attention has been paid to alternatives like more modest legislative goals, or improvement of the act through administrative changes. Unwilling to settle for anything less than a whole loaf, reformers—and the public—have been forced to live with none.

This chapter considers four options for revising the statute: amending the Lobby Act to place its focus on voluntary compliance with disclosure requirements; establishing an office of lobbyist and interest group information that would collect, collate, analyze and distribute information about lobbying groups; combining the administrative functions of the Clerk of the House and the Secretary of the Senate to form a joint office; and repealing the Lobby Act altogether.

Finally, the chapter identifies several relatively minor changes that might be made in the act. These incremental options reflect the difficulty Congress has experienced in approving a broad revision of the Lobby Act over the past thirty years and implicitly suggest an approach that favors small improvements in the statute over none at all.

I. AMEND THE LOBBY ACT TO FOCUS ON VOLUNTARY COMPLIANCE

In March 1984, six months after the committee's hearing on the Lobby Act, Senator Durenberger introduced S. 2390, the Integrity of Lobbying Act Amendments of 1984.[1] This measure, a result of the committee's 1983 hearings, takes a different approach from previous legislation revising the Lobby Act. The bill's purpose, as Senator Durenberger explained in his introductory remarks in the *Congressional Record*, is to "improve the management of the existing lobby disclosure program and to encourage lobbyists to provide more and better information." [2] The bill's major structural change is the granting of administrative authority—authority circumscribed by the *Harriss* decision—to the Clerk of the House and the Secretary of the Senate, with the proviso that neither the Clerk nor the Secretary may compel compliance with the act's requirements. This new administrative authority replaces the criminal penalties presently in Section 310 of the act and removes the Justice Department as the enforcement authority.

The rationale for this change is three-fold. First, it makes explicit the "self-regulatory" nature of the act. Because the Justice Department is severely restricted by the *Harriss* decision from enforcing the act—recall that the agency has not prosecuted a case since 1954—in practical terms the criminal penalties of the act have no deterrent value. It can thus be argued that the lobbyists who do comply do so because they feel a moral or political obligation to comply with the spirit of the law. Senator Durenberger spoke to this point when introducing the bill:

> The upshot is that the 1946 act, though still mandatory, is obeyed through self-regulation, rather than external enforcement. And every quarter the 6,500 or so lobbying organizations who report their activities do so largely voluntarily, without coercion.[3]

Second, the bill restores the Lobby Act's requirements as Congress intended them. The Court's decision in *Harriss* is predicated on the Lobby Act's criminal penalties. It will be recalled that the Court, finding the registration and reporting sections vague and indefinite, asserted that constitutional requirements are:

> . . . violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held responsible for conduct which he could not reasonably understand to be proscribed.[4]

Removing the criminal enforcement provisions, according to Senator Durenberger, does not remove the authority of the Court's interpretation, but it does ". . . remove the basis upon which the act's disclosure requirements were drastically narrowed." [5] Congress could now require "the kinds of information originally sought by Congress, but not required under *Harriss*—including disclosure of grassroots lobbying and the lobbying of congressional staff." [6]

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[1] Durenberger, Dave. Remarks in the Congressional Record [daily ed.], v. 128, March 6, 1984: S2363-2364.

[2] Ibid., p. S2363.

[3] Ibid., p. S2364.

[4] *U.S.* v. *Harriss*, 347 U.S. 617, (1954).

[5] Durenberger, Dave. Remarks in the Senate. Congressional Record [daily ed.], v. 130, March 6, 1984: S2364.

The third rationale for the measure is a desire to make a philosophical distinction between modern lobbying and the historically—and still prevalent—negative view of lobbying.

As will be recalled, the origins of disclosure legislation are to be found in part in the profoundly negative view many people have of lobbying. Calls for lobby accountability have almost always been preceded by allegations and investigations of lobbyist improprieties. One of the common justifications put forward for legislation has been the deterrent effect it could have on lobbyists who might consider improper of illegal behavior in the future. Even the word "regulation" in the title of the current statute suggests that lobbying is an activity that should be controlled.

According to its sponsor, S. 2390 makes the presumption that, contrary to this popular view, lobbyists have a valid role to play in the legislative process, and if recognition is given this presumption, most will act in an ethical manner with respect to accountability of their activities:

> I start with the presumption that lobbyists have little to hide and, in fact, that they share with the Congress a professional interest in helping to make the system more open and accountable.
>
> . . . an open and accountable lobbying process can further the sense of ethics and professionalism among the diverse lobbying community, while at the same time enhancing the public's confidence in Congress and our decisionmaking.[7]

The bill thus differs from legislation of the past by rejecting the need for criminal, or even civil penalties, and presuming that lobbyists will cooperate with a voluntary system.

The legislation empowers the Clerk and the Secretary to administer the act with technical assistance from the Comptroller General. Presumably, the Clerk and the Secretary would administer in such a way as to prompt lobbyists to provide more useful information to Congress and public. This could include requests (since the act is voluntary, Congress cannot actually require anything) for information originally required by the act; systems for analyzing and disseminating the information and incentives to encourage compliance.

The absence in the bill of specific instructions to the Clerk and Secretary on how to administer the act gives them utmost flexibility, but it also raises the possibility that these officers may administer the act in a way contrary to the sponsor's intent. Moreover, the legislation appears to presume that the Clerk and the Secretary will act in concert. This has not been the case with respect to current administration of the Lobby Act, even though the *Harriss* interpretation would not appear to preclude cooperation with respect to record-keeping and the like.

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[6] Ibid.

[7] Ibid.

One possible remedy to this problem might be to establish an administrative office under the joint authority of the Clerk and the Secretary. The joint office would operate with the benefit of general guidelines and could minimize duplication between the two Houses. The joint office could be charged with more specific instructions for collection, analysis and dissemination of lobbyist information. This idea is further developed in the following section of this chapter.

The self-regulatory aspect of S. 2390 is one of its principal features. Because the bill makes compliance with the Lobby Act voluntary, it provdes no formal sanctions or enforcement mechanism.[8] However, there are some reasons to believe lobbyists will comply. First, they can recognize their ethical responsibilities to the legislative process. Senator Durenberger spoke to this point in his introductory remarks on S. 2390 when he stated, ". . . I have yet to be convinced that lobbyists fundamentally object to helping Congress make the system more open and accountable." [9] Second, Members of Congress will help to enforce the act because they will recognize that doing so will "produce tangible public benefits" in the form of greater public trust and confidence in Congress and its abilities to "control" the "special interests." [10] Third, the reporting requirements under the act, though broader in scope, are less detailed and easier to comply with.

Senator Durenberger has also warned, though, that such reliance on voluntary compliance may be "unrealistic." [11] There are reasons to believe that a voluntary system would not work. Lobbyists could take the view that because lobbying is a freedom protected by the First Amendment, they owe no accounting of their activities; this is a position taken by some who do not register under the current Lobby Act. Should the Clerk and the Secretary issue guidelines under the scope of a revised act, lobbyists could take the view that such guidelines are contrary to the spirit, if no longer the letter, of the *Harriss* decision.

For other reasons, Members of Congress might be unenthusiastic about enforcing the act. As evidenced by Congress' failure to approve broad lobby disclosure legislation in years past, many Members—like lobbyists—see lobbying as a First Amemdment freedom that should be unfettered. Because of the close working relationships—and sometimes personal friendships—that Members have with lobbyists, Members could be reluctant to exercise sanctions in the form of, for example, publicizing the activities of, or refusing to meet with, an unregistered lobbyist. Of course, principled objections to lobby disclosure apply not only to this proposal but to all reform plans.

What incentives might the Clerk and the Secretary reasonably institute to motivate lobbyists to comply with the act's requirements? There are at least three. First, the Clerk and the Secretary might compile, analyze and distribute (more widely than lobbyist registrations are presently distributed), information on registered and unregistered lobbyists. As the result of these disclosures, public pressure could be brought to bear on unregistered lobbyists or on those whose reported expenditures were clearly out of line with their known activities.

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[8] Ibid.
[9] Ibid.
[10] Ibid.
[11] Ibid.

Second, the Clerk and the Secretary could tie compliance with the act to the issuance of lobbyist access cards for the Capitol complex. When the 1984 security regulations requiring access cards were first contemplated, the Sergeants-at-Arms of the House and Senate sent letters to all registered lobbyists notifying them of the new procedures and asking them to appear at the Capitol to be photographed and receive access cards. Moreover, it was initially decided to require lobbyists who were not registered to provide some proof—a letter from an employer, for example—that he or she was a professional lobbyist. This policy was subsquently changed and any citizen who claims to be a lobbyist may now obtain an access card. Under S. 2390, Congress could authorize the Clerk and the Secretary to issue access cards only to individuals in compliance with the act.

Third, Congress could urge that sanctions be imposed by a professional organization with a claim to representing lobbyists. Such an organization exists—the American League of Lobbyists (ALL). If ALL were to endorse the Lobby Act as amended by S. 2390, it could urge compliance among its membership and perhaps make compliance a condition of membership. Congress might issue a Federal charter to ALL which would enhance its claim to speak for professional lobbyists. Opposition to this idea could arise from Members who would point out that lobbying—even professional lobbying—is unlike other professions. For example, unlike the medical profession, whose professional standards are established and enforced in large part by the American Medical Association (AMA), lobbying is an integral part of the governmental process and protected under the Constitution. How, then, can a private organization impose sanctions on a public, and constitutionally protected, activity?

In summing up, S. 2390 would establish a system of lobby disclosure that many are bound to find controversial. There are many questions about whether such a system would work. Although the legislation is broadly worded and open to speculation about exactly what it would accomplish—especially in its relationship to the Supreme Court's interpretation of the Lobby Act—it represents an effort to fundamentally re-think the role of lobbyists and the need for and utility of lobby disclosure. Although its effectiveness can be questioned, its supporters suggest that the ineffectiveness of existing legislation and the unbroken stalemate over stronger alternatives leaves little to be lost and, potentially, much to be gained.

II. ESTABLISHMENT OF AN OFFICE OF LOBBYIST AND INTEREST GROUP INFORMATION

In his testimony before the committee in 1983, Norman Ornstein made a number of suggestions for strengthening the Lobby Act without enacting new legislation. Among his recommendations were the following:

> . . . Congress should publish regularly—probably quarterly—a compilation indexed in a variety of ways, of every

> individual, with affiliations, who has testified before a congressional committee or subcommittee during the time period. Currently, there is no central catalog of witnesses. Testimony is one of the primary forms of interest group activity on Capitol Hill. A central list of witnesses would make it easier for academics, legislators, and journalists to keep track of changes in committee and interest group activity over time, and to see who some of the principal actors are.
>
> . . . Congress should move to disclose and analyze in a much better fashion the mail it receives from constituents and others. Many, perhaps most, individual offices on Capitol Hill maintain rather sophisticated inventories of incoming mail; how many letters are received on an individual bill or subject, where they come from, whether they are individual hand-written letters, hand-written postcards, telegrams or preprinted letters. But it is difficult, if not impossible, to get overall figures on mail sent to Congress from congressional post offices. If we have the ongoing ability to monitor congressional mail in this fashion, it will be easy to tell when massive grassroots campaigns are taking place and possible thereafter to investigate, as journalists or political scientists, the sources.
>
> . . . better reporting by Congress of mail received would likely trigger better coverage by journalists of lobbying campaigns—and, as the campaign experience has shown, disclosure works best when its results are used and analyzed by scholars and journalists. With better recording and reporting of mail campaigns inside Congress, journalists would be encouraged to report better on the generation of these campaigns, perhaps picking some individual examples of letter writers and talking to them about where their motivation or inspiration came from.[12]

Dr. Ornstein's recommendations are encompassed in a proposed Senate Office of Lobbyist and Interest Group Information. The office would be created by Senate resolution; no change in the Lobby Act would be required. The office would collect from a variety of existing sources data on Washington lobbyists and interest groups. Through the use of the Senate Computer Center, this information would be analyzed in such a way as to provide, upon request by a Senate office or members of the public, a profile of lobbyist or interest group activities accurate to the extent that the data provided to the office is accurate.

The proposed office would be established within the existing Office of the Public Records, itself a sub-unit of the Office of the Secretary of the Senate. The office would be administered by the Superintendent of Public Records.

The following sources would provide data for the office:

1. The 1946 Federal Regulation of Lobbying Act;

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[12] 1983 Lobby Act Hearings, p. 194-196.

2. Publicly available information on the lobbying activities of non-profit organizations designated as 501(c)(3) and 501(c)(4) by the Internal Revenue Service;
3. Publicly available information required pursuant to OMB Circular A-122 and analogous cost accounting provisions in the Defense Acquisition Regulations and the Federal Acquisition Regulations;
4. Publicly available information required under the Foreign Agents Registration Act;
5. The Congressional Record catalogue of witnesses and withness affiliations;
6. Information made public pursuant to Senate Rules 35 and 37 pertaining to gifts and conflict of interest regulations for Senate employees;
7. Publicly available information required under the Federal Election Campaign Act and its subsequent amendments; and
8. Statistical information regarding the volume and nature of mail delivered to Senate offices. This provision could require a change in the Senate rules compelling offices to report the nature and volume of their mail, or might operate voluntarily with offices opting to cooperate with the program or not.

The proposed office would be authorized to prepare upon request from any Senate office, a special study based on the information in its files. Additionally, it would serve as a clearinghouse for lobbyist and interest group information. As such, it would collect and make available for public inspection and duplication such information as: Federal, State and local statutes, rules and regulations governing the activities of lobbyists and interest groups; journalistic articles; and scholarly legal and academic studies of lobbyists and interest groups.

The proposed office would re-design the registration and reporting forms required under the Lobby Act, and it would adopt new procedures to insure accurate and complete lobby disclosure registrations and reports, within the scope of the act. Finally, it would refer members of the press and public to the appropriate Senate office for legal interpretation of the Lobby Act.

Manpower and technical resources would be determined through an appropriate management study that would be authorized by the Senate Committee on Rules and Administration.

This plan places the proposed office within the Senate's administrative secretariat, but the office could be located elsewhere. Were cooperation forthcoming from the House, the office could be administered jointly by the Secretary of the Senate and the Clerk of House. Information unique to the House—such as information made public pursuant to its gifts, honoraria and conflict of interest rules—could be entered into the system.

A congressional office of lobbyist and interest group information could be located within one of the legislative branch agencies. GAO has a great deal of experience with certain aspects of lobbying, for instance, investigations into allegations of violations of the statutes prohibiting lobbying with appropriated funds. The agency has testified frequently on the need to strengthen the Lobby Act and it has the technical hardware and expertise to develop the necessary computer software. Another alternative might be the Library of Congress. It is currently a depository for documents filed pursuant to the Foreign Agents Registration Act, and like GAO it has extensive computer facilities and it could call for legal and analytical assistance on the Congressional Research Service.

There are at least three benefits to the establishment of a lobbyist disclosure office. For, one it would centralize a large amount of scattered information bearing on the same subject and, more importantly, it would accomplish this without a change in the Lobby Act. No more or less information would be required of those who presently register, report or file under the various regulations listed above. Another advantage is that the analyses generated by the office would be quantitative in nature. No judgments would be made of groups spending the most money, testifying the most frequently, or mailing the most letters other than those revealed in the data. Where inaccuracies in the data could be expected because of the nature of the statutory or regulatory language—the Lobby Act is an obvious example—those systemic failings would be made known. This lends the system a degree of fairness and militates against complaints that certain groups may have been targeted or singled out by the media or opposing political forces.

Finally, the proposed office would be inexpensive. Whether the office was located in the Senate alone, as a joint congressional office, at the GAO or the Library of Congress, much of the manpower and hardware would already be in place. Likewise, the mechanisms for initial data collection would be in place. Start-up costs would involve developing the appropriate software program, arranging for delivery of the data, and arranging for printing and distribution. It is conceivable that, after start-up costs, the office could be budgeted for as little as $150,000 a year, a tiny fraction of the more than one-and-a-half billion dollars appropriated for legislative branch operations in fiscal year 1985.

There are two liabilities. The first concerns the cooperation of the agencies charged with the initial data collection. Although all the information that would be collected by the proposed office is public information, some agencies may be unwilling to systematically supply large quantities of data to the proposed office. In the case of the data collected under the authority of OMB Circular A-122, each agency establishes its own rules for complying with the regulations. Agency collection systems are almost certain to be unique and the proposed office would have to review and negotiate for data delivery with each separate agency.

A second problem concerns support for such a plan in the Senate. Some Senators may believe that an office of lobbyist disclosure implicity contravenes the Court's intent in the *Harriss* decision and violates the spirit if not the letter of that decision. Moreover, some Senators may express concern that the office could disrupt long-standing relationships with groups and impede the flow of information upon which Senators rely.

III. COMBINE THE CURRENT OPERATIONS OF THE CLERK OF THE HOUSE AND THE SECRETARY OF THE SENATE INTO A SINGLE OFFICE

An alternative to an office of lobbyist information might be to simply combine the present administrative responsibilities of the Clerk of the House and the Secretary of the Senate into a joint office. The Secretary of the Senate endorsed this idea in 1983.[13] Creating a single office to administer the act would end the present operational and management duplications, reduce costs, and be less confusing to journalists and members of the public seeking information about lobbyists, and to the lobbyists, themselves. But such an office might require a change in the statutory language and the prospects of that, in turn, might raise fears that such a move could open the statute for other revision. Moreover, making such an administrative change would not by itself guarantee a better quality of information. Finally, despite the Secretary's endorsement, combining the House and Senate offices has been an obvious idea that the Clerk and the Secretary have resisted in the past.

IV. REPEAL THE LOBBY ACT

This extreme alternative is supported by those who believe that the statute cannot be substantively revised in its present form, and that citizen demand in the absence of a disclosure statute would be a strong impetus for passage of new legislation. Proponents of repeal point to the repeated failures of reform efforts over the years and emphasize how the current statute is perceptively worse than no statute for the false patina of legitimacy it provides to groups who claim, and who promote the claim, that they are a "registered" lobbying group in compliance with Federal law. In practical terms, observers note, little useful information would be lost since it is agreed that reported information is vastly inaccurate. Likewise, the loss of self-protection the act presently provides Congress would be marginal. It has been suggested that even if a move to repeal ultimately failed, the controversy generated by such an attempt—one where groups that have historically opposed revising the act might also oppose its repeal—could prompt renewed consideration for a stronger statute.

There are arguments against this course of action. For one, repeal is a drastic measure and few statutes are ever simply deleted from the books by congressional vote. Chances are thus slim that such an action would be approved. Should the act in fact be repealed, lobbying groups might interpret the action as a license to abuse the lobbying process. Given past constitutional concerns about the act, new legislation might be difficult to enact. A new measure might tighten the definitional standards, but it might also similarly narrow coverage, excluding, for example, grass-roots, lobbying, an activity covered in the act's statutory language but exempted by the Supreme Court's construction in the *Harriss* decision. An alternative to repeal might be to change the act's permanently authorized status to one where the statute would have to come before the Congress periodically for review.

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[13] 1983 Lobby Act Hearings, p. 238.

V. MINOR ADMINISTRATIVE OPTIONS

A. REVISE THE REPORTING AND REGISTRATION FORMS

The forms required for registration and reporting are unchanged since enactment. Their design is poor and they are confusing to anyone attempting to fill them out. Re-designing the forms could clarify required information and encourage compliance. Additionally, the instruction booklet potential registrants receive to assist in submitting registration forms is equally unclear and confusing and should likewise be rewritten.

B. REVISE THE CONGRESSIONAL RECORD LISTINGS OF REGISTRATIONS AND REPORTS

The quarterly listings of registrations and reports in the *Congressional Record* are apparently arranged in a random fashion. The listings go on for many pages and it is difficult to attain a picture of, for example, the number of lobbyists reporting who are employed by the same law firm. The listings could be collated in such a way as to provide this and other more useful information.

C. AUTHORIZE AN APPROPRIATE SENATE OFFICE TO PROVIDE ASSISTANCE TO PEOPLE SEEKING LEGAL INTERPRETATION OF THE ACT

At present, the Secretary of the Senate's interpretation of the act precludes legal advice to citizens with questions regarding the registration and reporting provisions of the act. In 1983, the Secretary stated that "In past years, interpretation questions have been referred to the Department of Justice; in recent years, the Department has declined to handle such inquiries."[14] The Secretary should be authorized to provide such legal assistance either through attorneys in the office of the Secretary of the Senate or through referral to an appropriate Senate office, such as the office of the Legal Counsel.

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[14] 1983 Lobby Act Hearings, p. 236.

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